

## AGENDA

Catawba County Board of Commissioners Meeting  
Monday, April 21, 2014, 7:00 p.m.  
Robert E. Hibbitts Meeting Room, 1924 Courthouse  
30 North College Avenue, Newton, NC

1. Call to Order.
2. Pledge of Allegiance to the Flag.
3. Invocation.
4. [Approval of the minutes from the Board's Regular Meeting and Closed Session of April 7, 2014.](#)
5. Recognition of Special Guests.
6. Public Comment for Items Not on the Agenda.
7. Presentations:
  - a. [Statement of Support for the Guard and Reserve. Presented to the Honorable Ronald E. Bogle, State Chair, North Carolina Committee for Employer Support of the Guard and Reserve, Reservists Ed Barton and Mike Howard and Veterans Services Officer Cindy Travis.](#)
  - b. [Proclamation honoring the Military Order of the Purple Heart. Presented to Commander Mike Stubbs, Military Order of the Purple Heart, Chapter 634.](#)
8. Public Hearing:  
[Proposed Amendments to the Catawba County Official Zoning Overlay Map – Modification to the WS-III Protected and WS-III Critical Watershed Areas. Presented by Planning and Parks Director Jacky Eubanks.](#)
9. Appointments.
10. Consent Agenda:
  - a. [Tax Refund Request](#)
  - b. [Cancellation of May 19, 2014 Board of Commissioners Meeting](#)
11. Departmental Reports:
  - a. Economic Development Corporation:
    1. [GKN Driveline Newton LLC Economic Development Agreement and Resolution. Presented by Economic Development Corporation President Scott Millar.](#)
    2. [OHM Holdings LLC Economic Development Agreement and Resolution. Presented by Economic Development Corporation President Scott Millar.](#)
  - b. Utilities and Engineering:
    1. [Appropriation of FEMA Disaster Recovery Funds. Presented by Utilities and Engineering Director Barry Edwards.](#)
    2. [Balls Creek Area Water Service Engineering Contract Award. Presented by Utilities and Engineering Director Barry Edwards.](#)

3. Southeastern Catawba County (SECC) Water Supply Loop Phase III Pump Station and Storage Tank Bid Award. *Presented by Utilities and Engineering Assistant Director Jack Chandler.*

12. Other Items of Business.

13. Attorneys' Report.

14. Manager's Report.

15. Adjournment.

**PERSONS WITH DISABILITIES:** Individuals needing assistance should contact the County Clerk at 828-465-8990 within a reasonable time prior to the meeting. Access to the 1924 Courthouse for individuals with disabilities is at the south side ("A" Street). The elevator is located at the north end of the building. Participation in public meetings is without regard to race, creed, religion, national origin, sex, age, color, or disability.

**INFOTALK/INTERNET:** The Catawba County Telephone Information System will allow you to use your touch tone telephone to obtain current information on Catawba County 24 hours a day. Information is updated on a regular basis. Dial 465-8468 and INFOTALK will direct your questions with easy to understand instructions. Reach Catawba County on the Internet at <http://www.catawbacountync.gov>.

**CALENDAR:** The next Board of Commissioners meeting will take place on Monday, May 5, 2014 at 9:30 a.m. in the Robert E. Hibbitts Meeting Room, 1924 Courthouse, 30 North College Avenue, Newton, NC.



**PREVIEW OF COUNTY COMMISSION AGENDA  
MONDAY, APRIL 21, 2014, 7 P.M.  
ROBERT E. HIBBITTS MEETING ROOM  
1924 COURTHOUSE, NEWTON, N.C.**



The Catawba County Board of Commissioners will hold a public hearing on proposed amendments to the County's Official Zoning Overlay Map to eliminate the WS-III Watershed Protected Area and WS-III Critical Area classification from four properties located along Highway 10 West, west of the South Fork River, when the Board meets at 7 p.m. on Monday, April 21, 2014, at the 1924 Courthouse at 30 North College Avenue in Newton.

The Board will also consider a proposed Economic Development Agreement with GKN Driveline, which has announced plans to expand its Maiden facility, creating at least 228 new jobs by the end of 2018 and investing more than \$122 million at the facility. And it will consider a proposed Economic Development Agreement with OHM Holdings LLC, which has proposed to purchase seven parcels and rehabilitate two existing structures in Hickory's Urban Redevelopment Zone along Highway 127, which would create 50 new jobs and result in a \$7 million investment in that project.

The Board will consider awarding a bid for engineering services for the design, bid and bid award of the Balls Creek Area Water Service water project and consider awarding a bid for construction of a pump station and storage tank for the Southeastern Catawba County Water Supply Loop. The Board will consider appropriating \$66,464.16 in Disaster Recovery Funds awarded by FEMA to offset the cost to repair major damage at the Blackburn Landfill resulting from flooding that occurred across Catawba County on July 27, 2013. It will consider one tax refund request. And the Board will consider cancelling its May 19, 2014, meeting in an effort to prevent the Board from having four meetings in a 15 day period during the time of its budget hearings. Any items that the Board would have to address on May 19 would be added to the agenda for the Board's budget public hearing at 7 p.m. on Thursday, May 29, 2014 at the 1924 Courthouse in Newton.

The Board will also issue a statement conveying its support for the service and work of the nation's Guard and Reserve. And it will issue a proclamation declaring Catawba County as a Purple Heart County to bestow honor and gratitude to all combat wounded veterans and those who have received the Military Order of the Purple Heart.

### **PRESENTATIONS**

**A.** The Board will issue a Statement of Support for the service and work for the nation's Guard and Reserve. The Honorable Ronald E. Bogle, State Chair, North Carolina Committee for Employer Support of the Guard and Reserve, will be present to receive the Statement, as will employee reservists and Catawba County's Veterans Service Officer.

**B.** The Board will issue a proclamation declaring Catawba County as a Purple Heart County to bestow honor and gratitude to all combat wounded veterans and those who have received the Military Order of the Purple Heart.

### **PUBLIC HEARING**

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

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

Staff submitted a request to the North Carolina Department of Environment and Natural Resources (NCDENR), Division of Energy, Mineral, and Land Resources to modify the watershed map. The material included construction drawings for Jacob Fork Park illustrating existing and future site conditions, a map of existing and proposed drainage patterns, and a

conceptual site plan for future development of two of the parcels. NCDENR, Division of Energy, Mineral, and Land Resources reviewed the request and approved it, conditioned upon completion of the project.

Staff recommends amending the Catawba County Official Zoning Overlay Map to remove the WS-III Protected and WS-III Critical Area from the parcels at issue. The Planning Board held a public hearing on March 31, 2014. No one spoke in favor of or in opposition to the request. Mr. Alex Fulbright, the City of Newton's Assistant Planning Director, provided general information about the work the City of Newton will provide to reroute storm water and the ability to better market property for future development without the watershed designation. Mr. Ed Neill commented that the request was a smart idea and the relatively small area to come out of the watershed would have insignificant affects downstream. The Planning Board voted 9-0 to submit a favorable recommendation to the Board of Commissioners to amend the Catawba County Official Zoning Overlay Map by removing the WS-III Protected and WS-III Critical Area from the parcels at issue.

### **CONSENT AGENDA**

**A.** The Board will consider a tax refund request totaling \$2,939 made to the Tax Office. Records have been checked and this refund verified, and the Tax Collector is asking for approval of the refund request. Under North Carolina General Statute 105-381, a taxpayer who has paid his/her taxes may request a refund (in writing) for the amount paid through error.

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

### **DEPARTMENTAL REPORTS**

#### **A. ECONOMIC DEVELOPMENT CORPORATION**

**1.** The Board will consider entering into an Economic Development Agreement between the County and GKN Driveline Newton LLC, adopting a related resolution, and authorizing the Chair to execute these documents along with any other needed documents. GKN Driveline Newton LLC intends to construct, up-fit and/or equip existing manufacturing facilities at two locations in the Town of Maiden, at 1848 GKN Way and 2900 Highway 321A South. They plan to invest a minimum of \$122,438,000 and create 228 new jobs over five years. The average wage of the new jobs will be \$39,986, exceeding Catawba County's average wage of \$36,223.

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

The proposed incentive grant is based on a contract with obligations requiring satisfactory performance by the company and adhering to all North Carolina General Statutes. The contract requires a minimum investment of \$122,438,000, the creation of 228 new jobs, and the maintenance of 563 existing and 92 contractual jobs currently at the facilities. Each investment during an investment period would receive a five year incentive payment equal to 80% of the final assessed value as determined by the County Tax Assessor, with a maximum total incentive grant payment of \$2,595,686 and individual year maximum payments of \$164,016 in year 1; \$332,789 in year 2; \$405,378 in year 3; \$463,890 in year 4; \$519,137 in year 5; \$355,121 in year 6; \$186,348 in year 7; \$113,759 in year 8; and \$55,247 in year 9. This investment will net a positive payback to the County immediately, similar to paybacks used to determine grant involvement in other County projects. As with all incentives provided by the County, these incentives will be based on an economic

development agreement which requires GKN Driveline to meet minimum thresholds of investment (\$122,438,000 by 2018) and job creation (228 by 2018). Clawbacks included in the agreement require repayment should the investment and job creation amounts not be met or sustained.

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

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

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

## **B. UTILITIES AND ENGINEERING**

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

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

On February 4, 2014, the County received \$66,464.16 from the State of North Carolina, a disbursement of federal and state disaster recovery funds to cover the costs of repairs at the Blackburn Landfill. This amount represents approximately 87% of the total repair expenditures. Staff requests the funds be appropriated to reimburse the expense accounts used for the non-budgeted, unexpected repair costs. The Board's Finance and Personnel Subcommittee recommends the appropriation

of these FEMA funds to reimburse expenditures incurred to repair major damage to the landfill property.

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

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

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

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

A significant portion of this project will be constructed along or within the NC Highway 16 right-of-way. Staff will take necessary precautions to ensure project design and development is in harmony with NC DOT planned improvements to NC Highway 16. Staff and McGill Associates will work with NC DOT in establishing project parameters along the Highway 16 corridor as the first step in project design. The Board's Policy and Public Works Subcommittee recommends entering into this contract with McGill Associates.

**3.** The Board will consider awarding a contract for pump station and storage tank construction on the Southeast Catawba County Water (SECC) Supply Loop, Phase III to Locke-Lane Construction, Stony Point, N.C., in the amount of \$1,838,643; approving an Agreement for Construction Administration with Davis & Floyd, Inc. in the amount of \$128,700; and approving a budget revision in the amount of \$40,000.

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

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

Based upon a review of the bids and qualifications of the contractors, Davis & Floyd, Inc. recommends the construction of the pump station and storage tank be awarded to the lowest responsible, responsive bidder, Locke-Lane Construction of Stony Point, NC, in the amount of \$1,838,643. Locke-Lane Construction is a Service Disabled Veteran Owned Small Business, as certified by the North Carolina Department of Veteran Affairs, with an unlimited general contractor's license in North Carolina and South Carolina. The owner and principle engineer is a West Point graduate in Civil Engineering and has an MBA from Columbus State University. Locke-Lane Construction has experience on multiple projects that are similar in nature to this project including: Town of Taylorsville: Booster Pump Station and Water Storage Tanks, \$970,608; Charlotte-Mecklenburg Utilities: Mallard Creek WWTP Effluent Pump Station and Oxid Pump Station, \$580,584; Pre-Con Corporation, Maiden, NC, 0 Three Pre-Stressed Concrete Storage Tanks (76 feet in diameter), \$2,483,262, and Fort Bragg Manhole Rehabilitation Project, \$3,002,813.

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

The SECC Water Supply Loop Phase III project will require an additional \$40,000 in funding. Prior project authorization was budgeted in Fiscal Year 2011/12. The current project balance is \$2,019,800.54. The bid award is \$1,838,643, construction administration is \$128,700, and a 5% contingency is \$92,000, totaling \$2,059,343. Therefore, a budget revision in the amount of \$40,000, appropriating water and sewer available fund balance, is requested. The Board's Policy and Public Works Subcommittee recommends awarding a contract for the pump station and storage tank construction on the SECC Water Supply Loop Phase III to Locke-Lane Construction, Stony Point, N.C., in the amount of \$1,838,643; approving an Agreement for Construction Administration to Davis & Floyd, Inc., Hickory, N.C., in the amount of \$128,700; and approving a budget revision in the amount of \$40,000.

**CONTACT: DAVE HARDIN, PUBLIC INFORMATION OFFICER 465-8464**



# STATEMENT OF SUPPORT FOR THE GUARD AND RESERVE



## *Catawba County Board of Commissioners*

The Catawba County Board of Commissioners recognizes the Guard and Reserve are essential to the strength of our nation and the well-being of our communities.

In the highest American tradition, the patriotic men and women of the Guard and Reserve serve voluntarily in an honorable and vital profession. They train to respond to their community and their country in time of need. They deserve the support of every segment of our society.

If these volunteer forces are to continue to serve our nation, increased public understanding is required of the essential role of the Guard and Reserve in preserving our national security.

Now, therefore, the Catawba County Board of Commissioners commits Catawba County Government in joining other employers in pledging that:

- The County fully recognizes, honors and enforces the Uniformed Services Employment and Reemployment Rights Act (USERRA).
- The County will provide our managers and supervisors with the tools they need to effectively manage those employees who serve in the Guard and Reserve.
- The County appreciates the values, leadership and unique skills Service members bring to the workforce and will encourage opportunities to employ Guardsmen, Reservists, and Veterans.
- The County will continually recognize and support our country's Service members and their families in peace, in crisis, and in war.

\_\_\_\_\_  
*Employer*

Paul E. Mock  
National Chair, ESGR

Chuck Hagel  
Secretary of Defense

\_\_\_\_\_  
*Date*



# ***Government of Catawba County, North Carolina***

*“Keeping the Spirit Alive Since 1842!”*

## **PROCLAMATION**

### ***HONORING THE MILITARY ORDER OF THE PURPLE HEART***

**WHEREAS**, the Purple Heart is the oldest decoration in present use and was initially created as the Badge of Military Merit by George Washington in 1782; and

**WHEREAS**, the Purple Heart was the first American service award or decoration made available to the common soldier and is specifically awarded to any member of the United States Armed Services wounded or killed in combat while serving the United States against opposing armed forces; and

**WHEREAS**, the mission of the Military Order of the Purple Heart, chartered by an act of Congress, is to foster an environment of goodwill among the combat wounded veteran members and their families, promote patriotism, support legislative initiatives and most importantly – make sure we never forget; and

**WHEREAS**, there have been many Catawba County residents who made the ultimate sacrifice for the cause of freedom and many combat wounded Veterans and Purple Heart recipients who live in the County.

**NOW, THEREFORE, THE CATAWBA COUNTY BOARD OF COMMISSIONERS** does hereby bestow honor and gratitude to all combat wounded Veterans and those who have received the Military Order of the Purple Heart and proudly proclaims Catawba County as a Purple Heart County in the State of North Carolina.

This 21st day of April, 2014.

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**Katherine W. Barnes, Chair  
Catawba County Board of Commissioners**

## MEMORANDUM

TO: Catawba County Board of Commissioners

FROM: Jacky Eubanks, Director of Planning, Parks, and Development

DATE: April 21, 2014

RE: Proposed Amendments to the Catawba County Official Zoning Overlay Map – Modification to the WS-III Protected and WS-III Critical Watershed Areas

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### REQUEST

A public hearing is scheduled to consider an amendment to the Catawba County Official Zoning Overlay Map to modify the WS-III Protected and WS-III Critical Watershed areas.

### BACKGROUND

In response to state legislation, Catawba County adopted a Watershed Protection Ordinance effective January 1, 1994. The ordinance established watershed protection districts within the County and were incorporated in the Unified Development Ordinance in 2007. A watershed is land area that contributes surface water drainage to a specific point (i.e. water intake, water supply). The purpose of watershed protection districts is to limit exposure of pollutants within the watershed to the water supply by restricting built upon area (imperviousness) of nonresidential development and density of residential development.

Portions of the parcels labeled 2, 3, 4, and 5 on the attached WS-III Watershed Reclassification map are within the WS-III Protected and WS-III Critical Watershed areas. Currently stormwater drainage pipes carry water from this area north to a point west of the City of Newton's water intake. The City of Newton is in the process of altering the location of culverts and drainpipe on the northern side of NC 10 Highway so that stormwater will be directed outside the WS-III Watershed. The discharge point will be south of the city's water intake (see Jacob Fork Watershed Existing and Proposed Drainage Patterns map).

Staff submitted a request to North Carolina Department of Environment and Natural Resources (NCDENR), Division of Energy, Mineral, and Land Resources to modify the watershed map. The material included construction drawings for Jacob Fork Park illustrating existing and future site conditions, a map of existing and proposed drainage patterns, and a conceptual site plan for future development of parcels 4 and 5. NCDENR, Division of Energy, Mineral, and Land Resources reviewed the request and approved it conditioned upon completion of the project.

### Staff Recommendation

Staff recommends amending to the Catawba County Official Zoning Overlay Map to remove the WS-III Protected and WS-III Critical Area from the parcels labeled 2, 3, 4, and 5 on the WS-III Watershed Reclassification Map.

Public Hearing Discussion

The Planning Board held a public hearing on March 31, 2014. No one spoke in favor or in opposition to the request. Alex Fulbright, the City of Newton's Assistant Planning Director, provided general information about the work Newton will provide to reroute stormwater and the ability to better market property for future development without the watershed designation. Ed Neill commented that the request was a smart idea and that the relatively small area to come out of the watershed would have insignificant affects downstream.

**PLANNING BOARD RECOMMENDATION**

The Planning Board voted 9-0 to submit a favorable recommendation to the Catawba County Board of Commissioners to amend the Catawba County Official Zoning Overlay Map by removing the WS-III Protected and WS-III Critical Area from the parcels labeled 2, 3, 4, and 5 on the WS-III Watershed Reclassification Map.

**RECOMMENDATION**

Staff recommends the Board of Commissioners approve amending to the Catawba County Official Zoning Overlay Map to remove the WS-III Protected and WS-III Critical Area from the parcels labeled 2, 3, 4, and 5 on the WS-III Watershed Reclassification Map.

# Jacob Fork Watershed Existing and Proposed Drainage Patterns Stover Court Drainage

City of Newton  
Water Intake

New Drainage

Sewer

Existing Drainage  
(To be rerouted)

Existing Drainage

Existing Culverts

Proposed Culvert

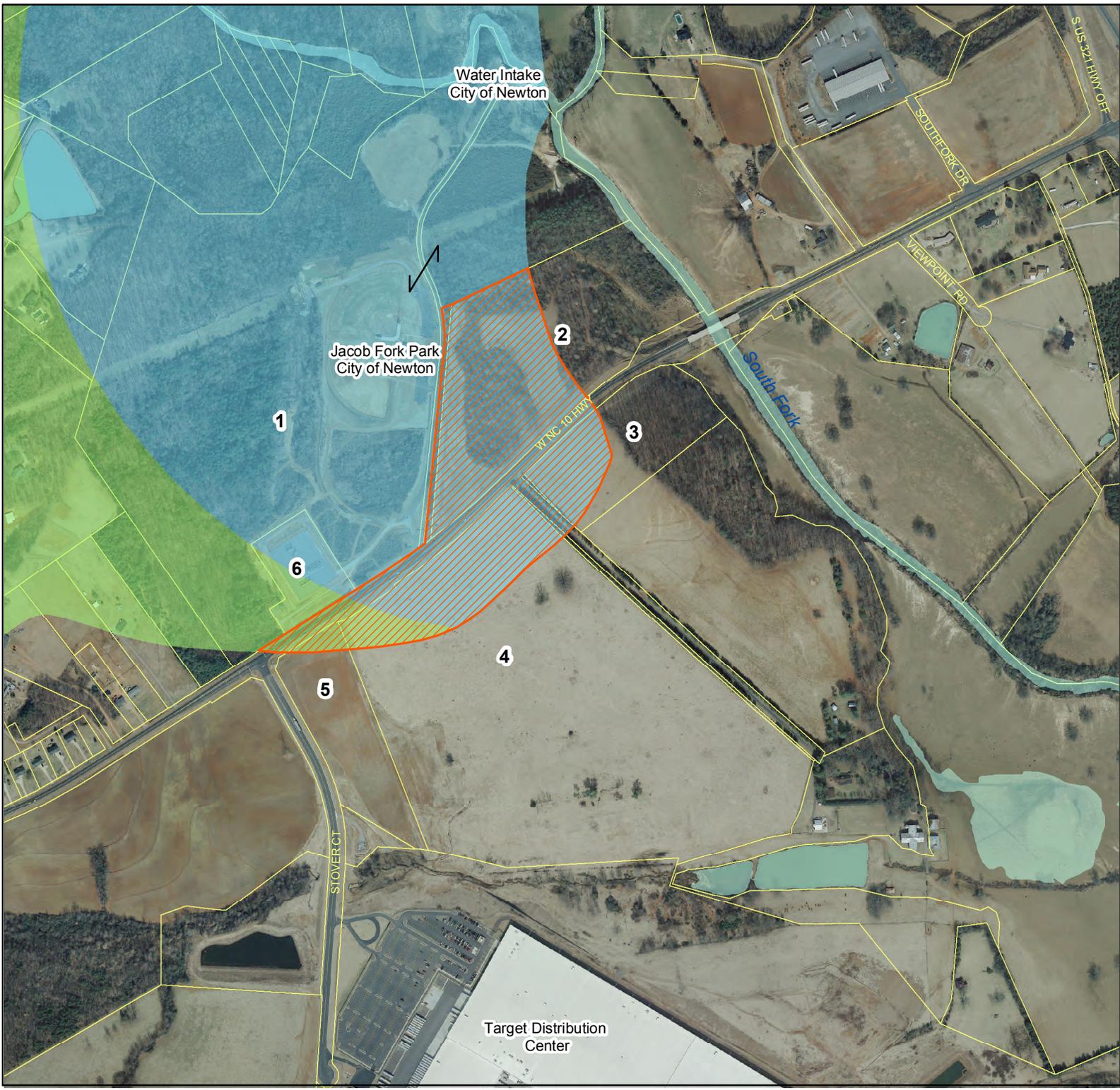


1 inch = 200 feet



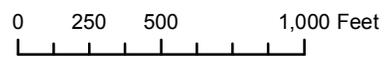
This map product was prepared from the Catawba County, NC, Geographic Information System. Catawba County has made substantial efforts to ensure the accuracy of location and labeling information contained on this map. Catawba County promotes and recommends the independent verification of any data contained on this map product by the user. The County of Catawba, its employees and agents disclaim, and shall not be held liable for any and all damages, loss or liability, whether direct, indirect or consequential which arises or may arise from this map product or the use thereof by any person or entity.

# WS-III Watershed Reclassification



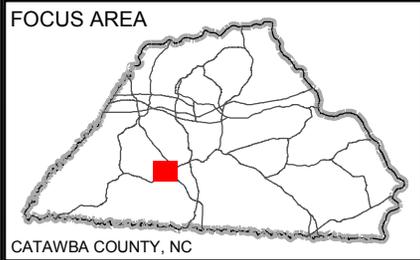
-  Water Bodies
-  Parcels
-  WS-III Critical Area
-  WS-III Protected Area
-  Area requested to be removed from watershed classification

1 Through 6 -- See  
Adjacent Property Owner List



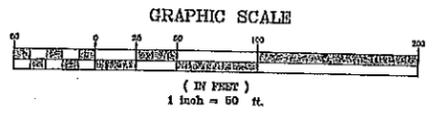
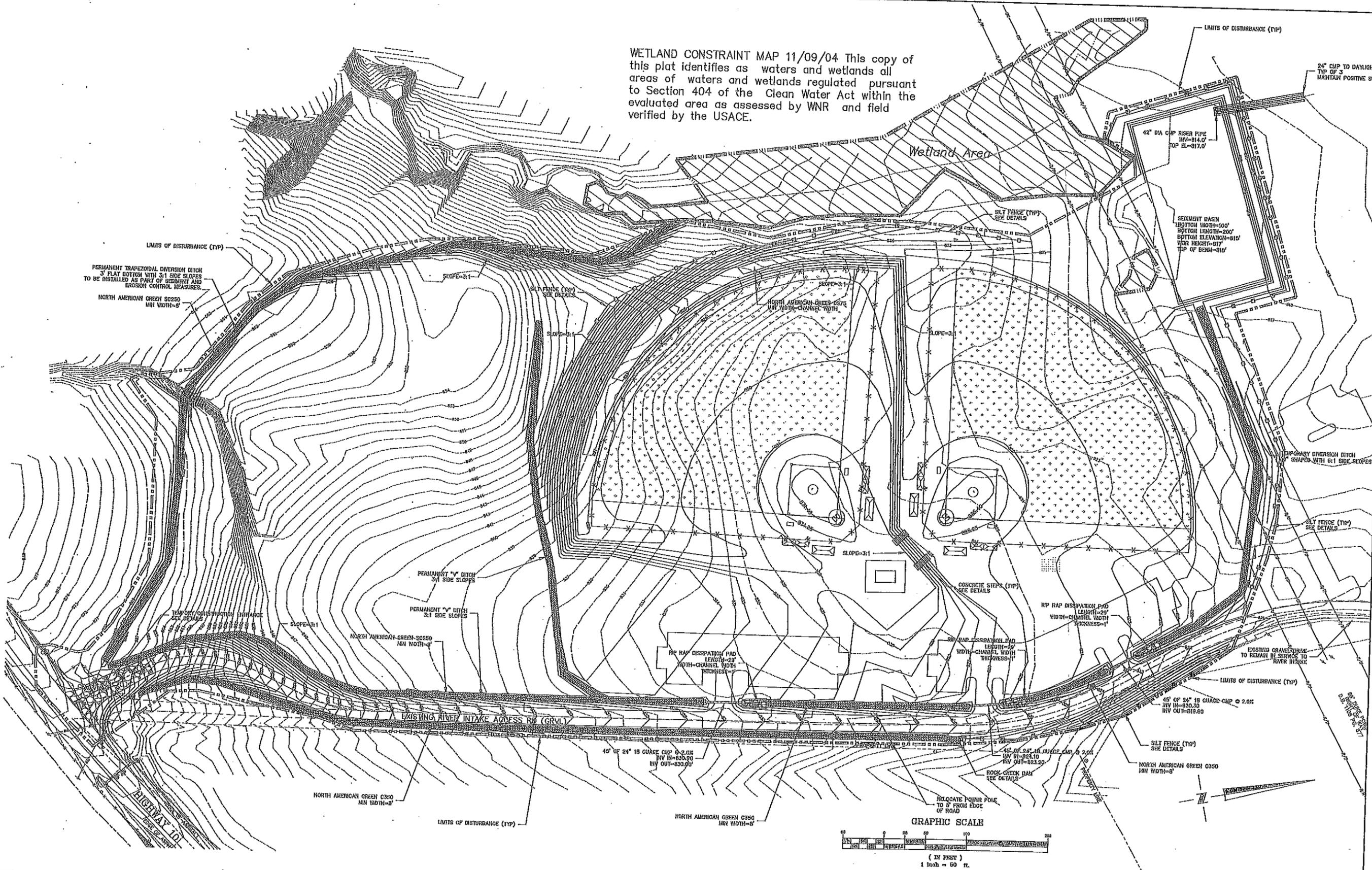
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Path: E:\projects\planning\WSIII\_Reclassification.mxd



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WETLAND CONSTRAINT MAP 11/09/04 This copy of this plat identifies as waters and wetlands all areas of waters and wetlands regulated pursuant to Section 404 of the Clean Water Act within the evaluated area as assessed by WNR and field verified by the USACE.



REV. NO.	DESCRIPTION	DATE

PROJECT MANAGER  
BSH  
DESIGNED BY  
APG  
APPROVED BY  
APG  
FILE NAME  
40375.HLBASE.dwg



231 16th AVENUE, NE  
HICKORY, NC 28601  
(828) 327-6911

Office Locations:  
North Carolina  
South Carolina  
Georgia  
Florida

RELEASED FOR	DATE
APPROVALS	XX NOV 04
BIDDING	
CONSTRUCTION	
RECORD DWG.	

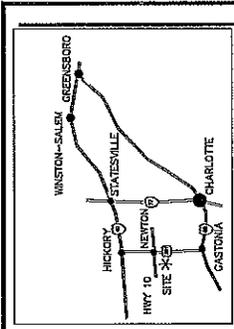


JACOB'S FORK PARK  
FOR THE  
CITY OF NEWTON  
CATAWBA COUNTY, NORTH CAROLINA

GRADING/SEDIMENTATION AND EROSION CONTROL PLAN

C4.0

FOR REVIEW PURPOSES ONLY



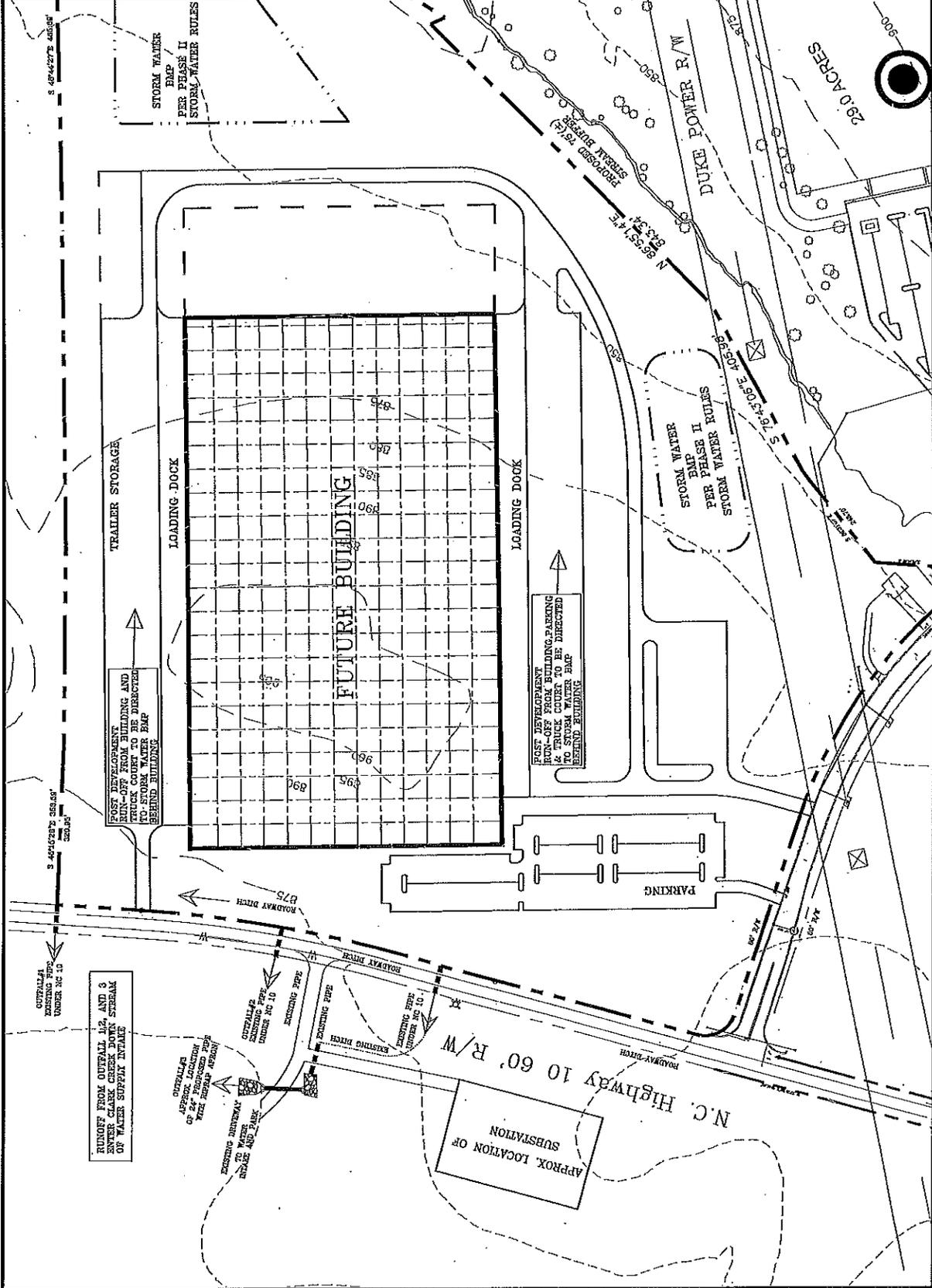
REGIONAL VICINITY MAP



**THE KEITH CORPORATION**  
*Real Estate Development*  
*Engineering & Surveying*  
 5855 Carraige Blvd., Suite 200  
 Charlotte, North Carolina 28208  
 704.555.6000 (f)704.365.0733  
 E. Alan Lewis

**NEWTON CORPORATE CENTER**  
 NEWTON, NC

**PROJECT 750,000 SF**  
**CONCEPT II**



**Conceptual Site Plan for Future Development  
 of Parcels 4 & 5**



North Carolina Department of Environment and Natural Resources  
Division of Energy, Mineral, and Land Resources

Tracy E. Davis, PE, CPM  
Director

Pat McCrory, Governor  
John E. Skvarla, III, Secretary

February 10, 2014

Chris Timberlake  
Catawba County Planning, Parks, and Development  
P.O. Box 389  
Newton, NC 28658

**Subject: Approval of Water Supply Watershed Map Change**

Dear Mr. Timberlake:

The purpose of this letter is to inform you that the Division of Energy, Mineral and Land Resources (DEMLR) has reviewed and approved the proposed modifications to Catawba County's Watershed Map received by our office on February 7, 2014. DEMLR approved the map in accordance with North Carolina General Statute 143-214.5 and North Carolina Administrative Code 15A NCAC 2B .0100 and .0200. Specifically, 15A NCAC 2B .0104(o) requires that all revisions to the EMC's or the local government's critical and protected area boundaries be approved by the EMC (or its designee) prior to adoption by the local government.

Catawba County submitted the revised map in response to a request from a property owner to alter existing drainage patterns on the site such that stormwater will discharge below the water supply intake in the South Fork Catawba River. The supporting materials submitted with the request include maps that depict the natural, current, and proposed drainage patterns. This approval of the change to the county's watershed map is conditional upon completion of the project as proposed. Please also be advised that new development projects on this property will be subject to NPDES Phase 2 stormwater requirements.

We appreciate the continued efforts Catawba County is making to help protect the vital water supplies of this state. Please let me know if our office can be of any assistance.

Sincerely,

Julie Ventaloro  
WSWP Program Coordinator

cc: Zahid Khan, NC DEMLR, Mooresville Regional Office  
ecc: Alex Fulbright, Assistant Planning Director, City of Newton

### Subject and Adjacent Property Owners

<u>Number</u>	<u>PIN</u>	<u>Acres</u>	<u>owner</u>	<u>owner2</u>	<u>address</u>	<u>city</u>	<u>state</u>	<u>zip</u>	<u>Bldg #</u>	<u>Street Name</u>
1	361903238095	89.50	CITY OF NEWTON		PO BOX 550	NEWTON	NC	28658-0550	3730	W NC 10 HWY
2	361903432106	21.97	CAROLYN COCHRAN	JOYCE PERRY	5558 ROBERTA RD	HARRISBURG	NC	28075-0316	3622	W NC 10 HWY
3	361903425668	8.98	CHARLES S WISHON REVOCABLE LIVING TRUST		3651 W NC 10 HWY	NEWTON	NC	28658-8887		W NC 10 HWY
4	361903418379	60.14	OAKWOOD FARM LLC		4414 SUMMIT OAKS PL NE	ROSWELL	GA	30075-5278	3707	W NC 10 HWY
5	361903312117	6.90	EUNICE LAIL PUNCH		3593 ZION CHURCH RD	HICKORY	NC	28602-8143	3723	W NC 10 HWY
6	361903229075	3.71	CITY OF NEWTON		PO BOX 550	NEWTON	NC	28658-0550	3768	W NC 10 HWY



Planning, Parks & Development  
PO Box 389  
100 A Southwest Boulevard  
Newton, NC 28658  
828-465-8380  
Fax: 828-465-8484  
[www.catawbacountync.gov/](http://www.catawbacountync.gov/)

## ZONING MAP AMENDMENT CONSISTENCY STATEMENT

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

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

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

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

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

\_\_\_\_\_  
Date



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

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

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

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

**PLAN CONSISTENCY STATEMENT:**

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

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

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

---

Katherine W. Barnes, Chair

**NO RECOMMENDED APPOINTMENTS**

## MEMORANDUM

TO: CATAWBA COUNTY BOARD OF COMMISSIONERS

FROM: Lori Mathes, Tax Collector

DATE: April 21, 2014

IN RE: REFUND REQUEST FOR APRIL 21, 2014 MEETING

### REQUEST

One refund request totaling \$2,939.00 has been made to the Tax Office. The records have been checked and this refund verified; therefore, the Tax Collector is asking for approval of the refund request.

### BACKGROUND

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. The attached sheet gives the information for the Taxpayer's request.

### RECOMMENDATION

The refund request is approved as shown on the attached sheet.

**REFUND REQUEST – April 21, 2014**

Lake Norman Security Patrol Inc  
P.O. Box 5393  
Statesville, North Carolina 28687

Abstract # 2988357

Lake Norman Security Patrol Inc listed and paid for leased computer equipment at their 1061 7<sup>TH</sup> St. Ct. SE, Hickory, NC location. CIT Finance LLC also listed and paid for the same equipment (Abstract# 2988387). Lake Norman Security Patrol Inc is requesting a refund of the taxes paid to Catawba County because they are required to pay CIT Finance LLC. Lake Norman Security Patrol will refrain from listing the equipment in 2014 and will resume listing the property the 1<sup>st</sup> of next year after they have exercised their \$1 buy-out and taken title of the equipment. This has been checked and verified by the Tax Collector's Office.

YEAR	VALUE	COUNTY		HICKORY		TOTAL
		RATE	TAX	RATE	TAX	
2013	285,295	.53	1,512	.50	1,427	<b>\$2,939.00</b>

\*This is in the City of Hickory

## MEMORANDUM

TO: Catawba County Board of Commissioners

FROM: Policy and Public Works Subcommittee

DATE: April 21, 2014

IN RE: Cancellation of May 19, 2014 Board of Commissioners Meeting

### REQUEST

The Policy and Public Works Subcommittee recommends the Board of Commissioners cancel its May 19, 2014 Regular Meeting and the accompanying Subcommittee Meetings.

### BACKGROUND

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

### RECOMMENDATION

The Policy and Public Works Subcommittee recommends the Board of Commissioners cancel its May 19, 2014 Regular Meeting and the accompanying Subcommittee Meetings on May 12, 2014.

## MEMO

**To:** Catawba County Board of Commissioners  
**From:** Scott Millar – Catawba County EDC  
**Date:** April 21, 2014  
**Subject:** GKN Driveline Newton LLC Economic Development Agreement and Resolution

### **Request**

The Board of Commissioners approve the Economic Development Agreement between the County and GKN Driveline Newton LLC, the related resolution attached, and authorize the Chair to execute these along with any other needed documents.

### **Project Background and Company Overview**

GKN Driveline Newton LLC intends to construct, up-fit and/or equip existing manufacturing facilities at two locations in the Town of Maiden located at 1848 GKN Way and at 2900 South US Highway 321A. They plan to invest a minimum of \$122,438,000 and create 228 new jobs over 5 years. The average wage of the new jobs will be \$39,986, exceeding Catawba County's average wage of \$36,223.

GKN Driveline documented strong consideration to place this project in an existing location in Ohio. With this expansion GKN Driveline will be exporting product from Catawba County worldwide in order to support the manufacturing of various automotive assemblies. This project is a "Most Favored Business" using County categories for economic assistance, and is involved in advanced manufacturing.

GKN Driveline is a division of GKN PLC. GKN is a global engineering group that designs, manufactures and services systems and components for world manufacturers. GKN Driveline is a global manufacturer and has facilities in Europe, Asia, Mexico and the United States. GKN Driveline develops, builds and supplies an extensive range of automotive driveline products and systems – for use in the most sophisticated premium vehicles that demand the most complex driving dynamics, to the smallest ultra low-cost cars.

### **Economic Development Incentive Grant Overview and Clawbacks**

The proposed incentive grant 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 \$122,438,000, the creation of 228 new jobs, and the maintenance of 563 existing and 92 contractual jobs currently at the facilities. Each investment during the Investment Period would receive a 5 year incentive payment equal to 80% of the final assessed value as determined by the Catawba County Tax Assessor, with a maximum total incentive grant payment of \$2,595,686 and individual year maximum payments of \$164,016 year 1, \$332,789 year 2, \$405,378 year 3, \$463,890 year 4, \$519,137 year 5, \$355,121 year 6, \$186,348 year 7, \$113,759 year 8 and \$55,247 year 9. This investment will net a positive payback to the county immediately, similar to paybacks used to determine grant involvement in other county projects.

Like all incentives provided by the County, these incentives will be based on an economic development agreement which requires GKN Driveline to meet minimum thresholds of investment (\$122,438,000 by

2018) and job creation (228 by 2018). Clawbacks are included in the agreement requiring repayment should the investment and job creation amounts not be met or sustained.

**Recommendation**

The Board of Commissioners approve the Economic Development Agreement between the County and GKN Driveline Newton LLC, the related resolution attached, and authorize the Chair to execute these along with any other needed documents.

**Resolution No. 2014-**

**Resolution Authorizing Economic Development Incentives for GKN Driveline Newton LLC**

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

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

The Board of Commissioners approves a performance based grant, based on the minimum investment of \$122,438,000 and 228 new jobs, with a maximum payment of \$164,016 year 1, \$332,789 year 2, \$405,378 year 3, \$463,890 year 4, \$519,137 year 5, \$355,121 year 6, \$186,348 year 7, \$113,759 year 8 and \$55,247 year 9 (total maximum incentive of \$2,595,686). This grant will be used to reimburse the Companies’ expenditures as eligible under North Carolina General Statute 158-7.1. The Board of Commissioners also directs the County to execute a contract and any 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 21st day of April, 2014.

---

Katherine W. Barnes, Chair

Catawba County Board of Commissioners

Prepared by:  
Debra Bechtel  
County of Catawba Attorney  
PO Box 389, Newton, NC 28658

Mick Nylander  
GKN North America Services, Inc.  
3300 University Drive  
Auburn Hills, Michigan 48326

**STATE OF NORTH CAROLINA  
COUNTY OF CATAWBA**

**COUNTY OF CATAWBA AND GKN NEWTON  
ECONOMIC DEVELOPMENT AGREEMENT**

This **JOINT ECONOMIC DEVELOPMENT AGREEMENT** (this "Agreement") is made and entered into this 21<sup>st</sup> day of April, 2014, by and between **County of Catawba** (the "County"), a North Carolina body politic, having a mailing address of **Post Office Box 389, Newton, NC, 28658**, and **GKN Driveline Newton LLC** ("GKN Newton"), a Delaware limited liability company qualified to do business in the State of North Carolina, having a physical address with two manufacturing facilities in the Town of Maiden, North Carolina, and having an office address of 1848 GKN Way, Newton, North Carolina 28658.

**WITNESSETH:**

**WHEREAS**, North Carolina General Statute (NCGS) 158-7.1(a) authorizes Municipalities 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 GKN Newton is engaged in manufacturing automobile components and assemblies within the meaning of NCGS 158-7.1; and

**WHEREAS**, GKN Newton intends to construct, up-fit and/or equip existing manufacturing facilities ("Improvements") at two locations in the Town of Maiden in Catawba County at 1848 GKN Way (known by GKN Newton as "GAP 1 facility") and at 2900 South US Highway 321A (US321 "Gap 2 facility"), (the "Property" or the "Properties"), at a cost of not less than One Hundred Twenty Two Million, Four Hundred Thirty Eight Hundred Thousand Dollars (\$122,438,000) and intends to create Two Hundred Twenty Eight (228) new jobs and retain 563 permanent and 92 additional contract jobs currently at the facility, with the improvements to be constructed between January 1, 2014 and December 31, 2018 and new jobs to be created between January 1, 2014 and December 31, 2018 (the "Improvement Period"); and

**WHEREAS**, GKN Newton 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

**WHEREAS**, GKN Newton 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:

County and GKN Newton agree that this Agreement shall apply only with respect to Improvements undertaken or payments for such Improvements by GKN Newton between January 1, 2014 and December 31, 2018 (the "Improvement Period").

### **SECTION I – GKN Newton**

1. On or before May 31, 2014 GKN Newton shall:
  - 1.1 Deliver to County a certificate confirming that GKN Newton owns the Property and that the up-fit, and/or installation of the Improvements will result in the creation, maintenance and availability of a minimum of 228 new jobs with the intention to create 228 new jobs prior to December 31, 2018, and that the overall average wage will equal or exceed the average wage requirement under North Carolina Department of Commerce contractual requirements for each year that County pays GKN Newton the economic development incentive provided for herein. GKN Newton affirms understanding of, and agrees to comply with, the Calendar of Responsibilities as outlined in Exhibit "A". Such certificate shall be in the form or substantially in the form of the certificate attached to this Agreement as Exhibit "A". It is understood and agreed the 228 new jobs referred to above means original new jobs over and above the number of jobs existing at GKN Newton's Properties in Maiden on December 31, 2013.
  - 1.2 Provide an Opinion of Counsel for GKN Newton, in form and substance reasonably satisfactory to County, that this Agreement has been duly authorized, executed and delivered by GKN Newton; and
  - 1.3 Provide an Opinion of Counsel for GKN Newton, in form and substance reasonably satisfactory to County, stating that this Agreement is binding upon and enforceable against GKN Newton, in North Carolina, in accordance with its terms.
2. In order to induce County to enter into this Agreement and to appropriate and expend monies for payment of economic development incentives, GKN Newton represents and warrants that, as of the execution date hereof:
  - 2.1 GKN Newton is a Delaware limited liability company qualified to do business in the State of North Carolina, has a place of business within the State of North Carolina, and is in good standing and authorized to do business in the State of North Carolina;
  - 2.2 GKN Newton has the corporate power and authority to own its properties and assets and to carry on its business as now being conducted and has the corporate power and authority to execute and perform this Agreement;
  - 2.3 The undersigned representative of GKN Newton has the right, authority and duty to execute this Agreement in the name and on behalf of GKN Newton;
  - 2.4 This Agreement (i) is the valid and binding instrument and agreement of GKN Newton, enforceable against GKN Newton in accordance with its terms; (ii) does not violate any order of any court or other agency of government binding on GKN

Newton, the charter documents or operating agreement of GKN Newton or any provision of any indenture, agreement or other instrument to which GKN Newton is a party; and (iii) does not conflict with, result in a breach of, or constitute an event of default, or an event which, with notice or lapse of time, or both, would constitute an event of default, under any indenture, agreement or other instrument to which GKN Newton is a party;

- 2.5 There is no suit, claim, action or litigation pending, or to the knowledge of GKN Newton threatened, relating to the Improvements, the use of the Improvements for their intended purpose, or any other matter contained herein;
  - 2.6 There is no impediment to the use of the Property for the purposes contemplated by this Agreement.
  - 2.7 GKN Newton is not engaged in a business that would be exempt from property taxes.
3. In order to induce GKN Newton to enter into this Agreement and to appropriate and expend monies for payment of economic development incentives, County represents and warrants that, to the best of County's knowledge that, as of the execution date hereof:
- 3.1 County is a North Carolina body politic corporate in nature and existing under North Carolina law;
  - 3.2 County has the power and authority to carry on its business as now being conducted and has the power and authority to execute and perform this Agreement;
  - 3.3 The undersigned authorized representative of County has the right, authority and duty to execute this Agreement in the name and on behalf of County;
  - 3.4 This Agreement (i) is the valid and binding instrument and agreement of County, enforceable against County in accordance with its terms; (ii) does not violate any order of any court or other agency of government binding on County, the charter documents of County or any provision of any indenture, agreement or other instrument to which County is a party; and (iii) does not conflict with, result in a breach of, or constitute an event of default, or an event which, with notice or lapse of time, or both, would constitute an event of default, under any indenture, agreement or other instrument to which County is a party; and
  - 3.5 There is no suit, claim, action or litigation pending, or to the knowledge of County threatened, relating to the Improvements, the use of the Improvements for their intended purpose, or any other matter contained herein.
4. GKN Newton shall make investments to the Properties and Improvements during the Improvement Period. Cumulative expenditures will meet or exceed One Hundred Twenty Two Million, Four Hundred Thirty Eight Hundred Thousand Dollars (\$122,438,000) by December 31, 2018, all of which will qualify and result in additional value for ad valorem tax purposes as determined by the Catawba County Tax Office, and GKN Newton

further agrees to maintain in place, in good condition (ordinary wear and tear excepted), said Improvements through December 31, 2025.

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

## **SECTION II – COUNTY**

6. On or before May 31, 2014 County shall deliver to GKN Newton an Opinion of Counsel for County, in form and substance reasonably satisfactory to GKN Newton, that this Agreement has been duly authorized, executed and delivered by County; and stating that this Agreement complies with the terms and requirements of NCGS 158-7.1(a) and is binding upon and enforceable against County with its terms; and evidence in the form of a Resolution or Resolutions, or official minutes, which County duly adopted authorizing the economic development incentives set forth in this Agreement.
7. Payment of economic development incentives for Real and Personal Investments and for Job Creation in accordance with this Agreement shall be made as follows:
  - a. For Real and Personal Property Investments: County will provide annual payments equal to 80% of the ad valorem taxes associated with the additional value (exclusive of rolling stock) as paid to County for a five year period on each annual investment, commencing with the taxes payable for the tax values on December 31, 2014, and December 31 of the succeeding eligible years. Eligible investments during a single year of the Investment Period will qualify for five years of grants based on the actual assessed value for improvements made in that particular year. Eligible investments may be considered for a maximum of five years. By way of example only, eligible investments in CY1 would qualify for grants based on the taxes paid on those eligible investments for the years specific to CY1, CY2, CY3, CY4, and CY5. Eligible investments in CY2 would qualify for grants in CY2, CY3, CY4, CY5 and CY6; and eligible grants in CY3 would qualify for grants in CY3, CY4, CY5, CY6, and CY7.
  - b. Upon payment of ad valorem taxes by GKN Newton to County for each of CY1 through CY9, and certification by GKN Newton in the form or substantially in the form of the certificate attached hereto as Exhibit B, of Improvements made and proof of payment of taxes and verification that GKN Newton has created and maintained jobs as agreed herein, County will, within ninety (90) days, pay to GKN Newton an economic development incentive payment, the amount of which is calculated by multiplying by .8 times the total ad valorem tax revenue received by County attributable to the value of the Improvements made by GKN Newton pursuant to this Agreement in excess of the amount attributable to improvements already in place and taxed on the site as of December 31, 2013. This same process will be followed by County and GKN Newton in each of the immediately following eight (8) years.

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

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

- d. Said amounts shall be payable annually, beginning with taxes paid on improvements made in CY1 through CY9. For the purposes of this Agreement, "CY1" means calendar year 2014 and "CY2" through "CY9" means the succeeding eight (2015-2022) calendar years.
- e. GKN Newton shall furnish to County on or before March 5th of each calendar year (or such later date as may be allowed by law), following and corresponding to the previous July 1st when taxes are billed, the certification required by this Section 6, proof of payment of all applicable taxes, and documentation of the creation and maintenance of the jobs created under this Agreement. If requested, GKN Newton shall provide County, at County's expense, independent certification as to such expenditures and number of existing jobs.

### **SECTION III - OTHER**

8. Force Majeure. Notwithstanding the provisions of Paragraph 8, in the event GKN Newton is unable to meet the requirements of Paragraphs 3, 4 and 6 as a result of (i) an event of force majeure, including but not limited to fires, explosions, acts of God, acts of public enemy, insurrections, riots, terrorism, embargoes, labor disputes, including strikes, lockouts and job actions, or boycotts; (ii) the inability to obtain the governmental permits or approvals (including zoning) necessary for the acquisition of the land or undertaking and operating the Improvements after a good faith effort to obtain same has been made; (iii) shortages of materials or energy; (iv) changes in laws; or (v) other causes beyond the control of and arising without the fault or negligence of GKN Newton; then, in such event, the Improvement Period shall be extended for a period equal to the delay caused by any of the foregoing events so long as GKN Newton shall (a) have furnished County on a timely basis, upon the occurrence of such event, a notice thereof, and (b) take all commercially reasonable steps necessary to relieve the effect of such event and to resume completion of the Improvements. In accord with the foregoing, should the GKN Newton be unable to meet the requirements as described above as a result of a force majeure, the obligation of the County to pay as provided in Section II above, shall be suspended until such time as the GKN Newton is relieved from the effect of an event of force majeure and resumes completion of the improvements.
  
9. It shall be an Event of Default if any one or more of the following events shall occur for any reason whatsoever (and whether such occurrence shall be voluntary or involuntary or come about or be effected by operation of law or pursuant to or in compliance with any judgment, decree or order of any court or any order, rule or regulation of any administrative or governmental body):
  - a. If GKN Newton, except in the event of force majeure, shall commit a material breach of a material obligation hereunder (including without limitation, the obligation to meet the investment goals and maintaining 563 permanent and 92 additional contract jobs currently at the facility as of December 31, 2013 and, in addition, a minimum of 90% of the number (228) of newly created jobs as set forth herein) and such breach shall continue for a period of sixty (60) or more days following receipt of written notice from County;
  - b. If GKN Newton shall fail to qualify and/or maintain the requirements for eligibility and participation in agreements for State of North Carolina incentives applied for and awarded specific to this project as further defined in Exhibit C, attached and incorporated herein by reference;
  - c. If GKN Newton fails to timely file Exhibit A, or Exhibit B on or before March 5 of each year, following and corresponding to the previous July 1<sup>st</sup> when taxes are billed, and any qualifying incentive would be due to GKN Newton, this shall be deemed a breach of the Agreement. The remedies for this breach shall be those provided in Paragraph 9 below.
  - d. If any material representation, warranty or other statement of fact contained in this Agreement or in any final writing, certificate, report or statement furnished by GKN Newton to County in connection with the transaction

described in this Agreement, shall, to GKN Newton's knowledge, to be false or misleading in any material respect at the time given;

- e. If GKN Newton shall be unable to pay its debts generally as they become due; files a petition to take advantage of any insolvency statute; makes an assignment for the benefit of creditors; commences a proceeding for the appointment of a receiver, trustee, liquidator or conservator of themselves or of the whole or any substantial part of their property; files a petition or answer seeking reorganization or arrangement of similar relief under the federal bankruptcy laws or any other applicable law or statute of the United States of America or any state;
  - f. If County, except in the event of force majeure, fails to pay GKN Newton when such payment is due) or is otherwise unable to pay its debts generally as they become due; files a petition to take advantage of any insolvency statute; makes an assignment for the benefit of creditors; commences a proceeding for the appointment of an emergency manager, receiver, trustee, liquidator or conservator or any similar entity; files a petition or answer seeking reorganization or arrangement of similar relief under the federal bankruptcy laws or any other applicable law or statute of the United States of America or North Carolina;
  - g. If a Court of competent jurisdiction shall enter an order, judgment, or decree appointing a custodian, receiver, trustee, liquidator, or conservator of GKN Newton or of the whole or any substantial part of their properties, or approves a petition filed against GKN Newton seeking reorganization or arrangement of similar relief under the federal bankruptcy laws or any other applicable law or statute; or if, under the provisions of any other law for the relief or aid of debtors, a court of competent jurisdiction shall assume custody or control of GKN Newton or of the whole or any substantial part of their properties;
  - h. If a Court of competent jurisdiction shall enter an order, judgment, or decree appointing an emergency manager, custodian, receiver, trustee, liquidator, or conservator or any similar entity for County, or approves a petition filed against County seeking reorganization or arrangement of similar relief under the federal bankruptcy laws or any other applicable law or statute; or if, under the provisions of any other law for the relief or aid of debtors, a court of competent jurisdiction shall assume custody or control of County; or
  - i. If GKN Newton shall allow its taxable assets, employment and average wage amounts to fall below the minimum values agreed upon in this Agreement, as each of the same pertain to the facility contemplated by this Agreement.
10. County Remedy: If GKN Newton fails to cure an Event of Default for which it receives written notice from County, the obligation of County as set out herein shall terminate, and GKN Newton shall immediately refund to County all economic development incentive payments paid to GKN Newton prior to the date of the Event of Default plus interest at the rate of prime plus one percent (1%). The date the prime interest rate shall be determined shall be the date the GKN Newton receives the notice of the Event of Default. GKN Newton shall, as it relates to an Event of Default, have sixty (60) days after

receipt of the notice required above, or such longer period: a) to which GKN Newton may be entitled under applicable federal, state or local laws; or b) to which the parties agree in writing.

11. GKN Newton Remedy: If County fails to cure an Event of Default for which it receives written notice from GKN Newton, the obligations of GKN Newton as set out herein shall terminate, and County shall not be entitled to any payment from GKN Newton for any alleged Event of Default caused by GKN Newton. County shall, as it relates to an Event of Default, have sixty (60) days after receipt of the notice required above, or such longer period: a) to which County may be entitled under applicable federal, state or local laws; or b) to which the parties agree in writing. In addition, County shall pay GKN Newton an amount equal to the benefit that GKN Newton would have received under this Agreement had the County not failed to cure the Event of Default, plus all fees and costs incurred by GKN Newton that are necessary to enforce the terms of this Agreement.
12. GKN Newton and County acknowledge that any monies appropriated and expended by County for economic development incentives, as provided in this Agreement, are for a bona fide public purpose and are expended in good faith reliance on NCGS 158-7.1. In the event a Court of competent jurisdiction rules to which either GKN Newton or County is a party, that all monies expended by County pursuant to this Agreement were not offered and accepted in good faith and in compliance with NCGS 158-7.1 and, further, that such monies must be repaid, GKN Newton will make such repayment to County. In the event one or more lawsuits are brought against County or any County elected official, officer, agent or employee, or GKN Newton, challenging the legality of this Agreement, then County and GKN Newton shall exercise their best efforts to defend against any and all such lawsuits, at their own cost and expense. In any event, if GKN Newton is required to repay funds to County pursuant to this Section 9, the benefit of this Agreement to GKN Newton will have been lost and all further obligations of GKN Newton hereunder shall terminate.
13. All notices, certificates or other communications required or permitted to be given or served hereunder shall be deemed given or served in accordance with the provisions of this Agreement if the notice is (i) mailed in a sealed wrapper and is deposited in the United States mail, certified mail, return receipt requested, postage prepaid, or (ii) deposited with a national overnight courier service that retains receipts for its deliveries, properly addressed as follows:

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

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

GKN Newton: GKN Driveline Newton LLC  
Attn: Kevin Ruff

1848 GKN Way  
Newton, NC 28658

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

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

14. This Agreement shall inure to the benefit of, and is binding upon, County and GKN Newton and their respective successors and assigns. However, neither this Agreement, nor any rights, privileges, or claims created by this Agreement may be transferred by GKN Newton without the prior, written approval of County, which approval will not be unreasonably withheld.
15. Except as otherwise provided in this Agreement, this Agreement may not be amended, changed, modified or altered except by written agreement of the parties.
16. If any provision of this Agreement is held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provisions of this Agreement.
17. This Agreement may be executed in any number of counterparts, each of which when so executed and delivered shall be deemed an original, and it shall not be necessary in making proof of this Agreement to produce or account for more than one such fully-executed counterpart.
18. Controlling Law and Venue. This Agreement is governed by and shall be construed in accordance with the laws of the State of North Carolina; venue of any action shall be in the general courts of justice in Catawba County, or if in Federal court in the Western District of North Carolina.
19. The term of this Agreement shall commence on the date of execution and expire upon payment by County of all payments due to GKN Newton and GKN Newton fulfilling all of its requirements including real and personal property investments and the creation and maintenance of jobs, unless earlier terminated as provided herein.
20. Both GKN Newton and County acknowledge and stipulate that this Agreement is the product of mutual negotiation and bargaining and that it has been drafted by Counsel for both GKN Newton and County. As such, the doctrine of construction against the drafter shall have no application to this Agreement.

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

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

**Attest:**  
**(SEAL)**

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

\_\_\_\_\_  
Clerk

**GKN DRIVELINE NEWTON LLC**

By: \_\_\_\_\_ **(Seal)**  
Paul J. Westman  
Vice President

**STATE OF NORTH CAROLINA**  
**COUNTY OF CATAWBA**

I, \_\_\_\_\_ a Notary Public of said county and state, certify that Barbara E. Morris personally came before me this day and acknowledged that she is County Clerk to the Catawba County Board of Commissioners, a body politic corporate in nature, and that by authority duly given and as the act of the body politic the foregoing instrument was signed in its name by its Chair, sealed with its body politic seal, and attested by herself as County Clerk.

Witness my hand and seal this \_\_\_\_\_ day of \_\_\_\_\_, 2014.

[Seal]

\_\_\_\_\_  
Notary Public

My commission expires: \_\_\_\_\_

**STATE OF NORTH CAROLINA  
COUNTY OF CATAWBA**

I, \_\_\_\_\_ a Notary Public of said County and State, do certify that Paul J. Westman, Vice President – Taxation / Director of Tax – Americas and Corporate Projects, GKN North America Services, Inc. personally appeared before me this day and acknowledged on behalf of \_\_\_\_\_ the voluntary due execution of the foregoing document, all for the purposes therein expressed.

Witness my hand and seal this \_\_\_\_\_ day of \_\_\_\_\_, 201\_.

[Seal]

\_\_\_\_\_  
Notary Public

My commission expires: \_\_\_\_\_

This document has been pre-audited in the manner required by the Local Government Budget and Fiscal Control Act.

\_\_\_\_\_ Rodney Miller, Finance Director

Approved as to form on behalf of County of Catawba only:

\_\_\_\_\_ Debra Bechtel, County Attorney

**EXHIBIT A**  
Joint Economic Development Agreement  
Between County of Catawba and GKN Newton

**CERTIFICATE**

**TO: County of Catawba**

This Certificate is delivered pursuant to Section 1.1 of the Joint Economic Development Agreement (the "Agreement"), dated April 21, 2014, between County of Catawba ("County") and GKN Driveline Newton LLC ("GKN Newton"). Any capitalized term not otherwise defined herein shall have the meaning assigned to such term in the Agreement.

I, \_\_\_\_\_, do hereby certify, for and on behalf of GKN Newton, that:

- (a) GKN Newton owns the real property necessary for the up-fit of the Facility and the Improvements; and
- (b) GKN Newton will create, maintain and make available a minimum of 228 net new jobs prior to December 31, 2018 and the overall average wage will equal or exceed the average wage requirement under North Carolina Department of Commerce contractual requirements for each year that County pays GKN Newton the economic development incentive provided for herein.; and
- (c) GKN Newton agrees to comply with the Calendar of Responsibilities listed below.

**Calendar of Responsibilities:**

- By January 5: GKN Newton make payment to County according to Tax Listing filed by January 31<sup>st</sup> of the previous year unless extension is requested and approved for April 15<sup>th</sup>. Any extension request must be filed by January 31<sup>st</sup>.
- By March 5: GKN Newton must provide Exhibit B and Exhibit C, supporting documents and proof of payment and/or compliance as required within Agreement.
- By April 15: GKN Newton must provide Real/Personal Property Tax listings to County Tax Office.
- By April 22: County Tax Office to provide Tax Listing on Specified Accounts.\*

\*Note: these are not company responsibilities.

Dated at Catawba County, North Carolina, this \_\_\_\_ day of \_\_\_\_\_, 201\_\_.

**GKN DRIVELINE NEWTON LLC**

BY: \_\_\_\_\_

TITLE: \_\_\_\_\_

**EXHIBIT B**

Joint Economic Development Agreement  
Between County of Catawba and GKN Newton

**CERTIFICATE**

**TO: Catawba County**

This Certificate is delivered pursuant to Section 3, Section 4 and Section 6 of the Joint Economic Development Agreement (“the “Agreement”) dated April 21, 2014, between County of Catawba (“County”) and GKN Driveline Newton LLC (“GKN Newton”). Any capitalized term not otherwise defined herein shall have the meaning assigned to such term in the Agreement.

GKN Newton does hereby certify that:

- (a) The following improvements were made during the 20\_\_ Calendar Year: \_\_\_\_\_;
- (b) The following jobs were created during the 20\_\_ Calendar Year: \_\_\_\_\_ (please attach the most recent quarterly Form NCUI 101);
- (c) The average wage of all of those employed at the \_\_\_\_\_ facility during the 20\_\_ Calendar Year is as follows: (Wage Forms Total Payroll divided by number of employees) \_\_\_\_\_;
- (d) Total cumulative personal property valuation installed at the \_\_\_\_\_ facility during the 20\_\_ Calendar Year \_\_\_\_\_; and
- (e) Proof of taxes paid is attached to this certificate.

Dated at Catawba County, North Carolina, this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

**GKN DRIVELINE NEWTON LLC**

BY:Paul J. Westman

TITLE: Vice President- Taxation/ Director Of Tax- Americas and Corporate Projects, GKN North America Services, Inc.

**Attachments (required):**

Current Year Catawba County personal and real property Tax Listing information as reported to Catawba County Tax Office, Most recent quarterly Form NCUI 101, Proof of taxes paid in full.

**Calendar of Responsibilities:**

- By January 5: GKN Newton makes payment to County according to Tax Listing filed by January 31<sup>st</sup> of the previous year unless extension is requested and approved for April 15<sup>th</sup>. Any extension request must be filed by January 31<sup>st</sup>.
- By March 5: GKN Newton must provide Exhibit B and Exhibit C, supporting documents and proof of payment and/or compliance as required within Agreement.
- By April 15: GKN Newton must provide Real/Personal Property Tax listings to County Tax Office.
- By April 22: County Tax Office to provide Tax Listing on Specified Accounts.\*

\*Note: these are not company responsibilities.

## MEMO

**To:** Catawba County Board of Commissioners  
**From:** Scott Millar – Catawba County EDC  
**Date:** April 21, 2014  
**Subject:** OHM Holdings LLC Economic Development Agreement and Resolution

### **Request**

The Board of Commissioners consider the Economic Development Agreement between the County and OHM Holdings LLC (Transportation Insight), the related resolution attached, and authorize the Chair to execute these along with any other needed documents.

### **Project Background and Company Overview**

OHM Holdings LLC proposes to purchase 7 parcels and rehabilitate two existing structures in Hickory's Urban Redevelopment Zone along NC127. Known as the Lyerly Mill, the facility has been vacant for over 36 months and has been underutilized for many years. Contractualized expenditures for the upfit and renovation of these facilities would be \$6 million dollars for the tenant, Transportation Insight LLC, who will be spending at least \$1 million additionally on personal property at the site. Both entities are majority owned and controlled by D. Paul Thompson, Partner.

The State of North Carolina is participating in a Building Reuse grant program contractually binding OHM to creating 50 new jobs in addition to the currently existing 151 jobs in the City of Hickory (161 in the State of NC). The contract lists those jobs having an average salary of \$46,935, exceeding Catawba County's average wage by almost 30% (\$36,167).

Transportation Insight is one of the largest and most experienced 3PL's (third-party logistics) firms in North America, delivering custom logistics solutions to more than 400 corporate clients. They have other offices in Charlotte, Atlanta, and Bentonville, AR, in addition to their existing headquarters in Hickory. The project requires an energetic workforce, and the company has considered locating its operation in a locality where this workforce might be easier to find and maintain, but would like to remain committed to Hickory. Charlotte was a strong consideration for this project because of the workforce opportunities in that marketplace.

### **Economic Development Incentive Grant Overview and Clawbacks**

The proposed incentive grant 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 \$7,000,000, the creation of 50 new jobs, and the maintenance of all current Hickory positions. Qualifying investment during the Investment Period would receive a 5 year incentive payment equal to 67% of the final assessed value as determined by the Catawba County Tax Assessor, with a maximum total incentive grant payment of \$142,040 with maximum payments of \$28,408 for any individual year. This investment will net a positive payback to the county immediately, similar to paybacks used to determine grant involvement in other county projects.

Like all incentives provided by the County, these incentives will be based on an economic development agreement which requires OHM Holdings LLC to meet minimum thresholds of investment (\$7,000,000

by 2016, with a maximum potential incentivized investment of \$8M in assessed value) and job creation (50 new positions). In the event investment and job creation amounts are not met or sustained, all incentive payments stop immediately.

**Recommendation**

The Board of Commissioners approve the Economic Development Agreement between the County and OHM Holdings LLC, the related resolution attached, and authorize the Chair to execute these along with any other needed documents.

**Resolution No. 2014-**

**Resolution Authorizing Economic Development Incentives for OHM Holdings LLC**

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

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

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

This the 21st day of April, 2014.

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Katherine W. Barnes, Chair

Catawba County Board of Commissioners

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

**STATE OF NORTH CAROLINA**

**CATAWBA COUNTY AND  
OHM HOLDINGS, LLC**

**ECONOMIC DEVELOPMENT AGREEMENT**

**COUNTY OF CATAWBA**

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

**WITNESSETH:**

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

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

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

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

56 Third Street SE, Hickory, NC 28602, Parcel ID # 370208796291

51 Third Street SE, Hickory, NC 28602, Parcel ID # 370208799218

3081 Main Avenue Way SE, Hickory, NC 28602, Parcel ID # 370208797445

11 3<sup>rd</sup> Street SE, Hickory, NC 28602, Parcel ID # 370208799740

17 3<sup>rd</sup> Street SE, Hickory, NC 28602, Parcel ID # 370208799646

21 3<sup>rd</sup> Street SE, Hickory, NC 28602, Parcel ID # 370208799641

27 3<sup>rd</sup> Street SE, Hickory, NC 28602, Parcel ID # 370208799556

(collectively, the "Property"), at a cost in excess of Seven Million Dollars (**\$7,000,000**) for real and personal property improvements by OHM and Transportation Insight, with the

Improvements to be constructed between April 1, 2014 and May 30, 2016 (the "Improvement Period") and intends to create fifty (50) new jobs during that improvement period; and

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

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

WHEREAS, Company 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

WHEREAS, Company 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 agree as follows:

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

## SECTION I – COMPANY

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

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

- 1.2 Provide an Opinion of Counsel for Company, in form and substance reasonably satisfactory to County, that this Agreement has been duly authorized, executed and delivered by Company; and
  - 1.3 Provide an Opinion of Counsel for Company, in form and substance reasonably satisfactory to County, stating that this Agreement is binding upon and enforceable against Company, in North Carolina, in accordance with its terms.
2. In order to induce the County to enter into this Agreement and to appropriate and expend monies for payment of economic development incentives, Company represents and warrants to the County that as of the execution date hereof:
  - 2.1 OHM Holdings, LLC is a limited liability corporation duly organized and existing under the laws of 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 Company has the corporate power and authority to own their properties and assets and to carry on their business as now being conducted and has the corporate power and authority to execute and perform this Agreement;
  - 2.3 The undersigned Manager of OHM Holdings, LLC has the right, authority and duty to execute this Agreement in the name and on behalf of Company;
  - 2.4 This Agreement (i) is the valid and binding instrument and agreement of Company, enforceable against Company in accordance with its terms; (ii) does not violate any order of any court or other agency of government binding on Company, the charter documents or operating agreement of Company or any provision of any indenture, agreement or other instrument to which Company 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 Company is a party;
  - 2.5 There is no suit, claim, action or litigation pending, or to the best knowledge of Company threatened, relating to the Improvements, the use of the Improvements for their intended purpose, or any other matter contained herein;
  - 2.6 To the best of Company's knowledge, there is no impediment to the use of the Property for the purposes contemplated by this Agreement.
  - 2.7 Company is not engaged in a business that would be exempt from property taxes.
3. Company shall make investments to the Property and Improvements during the Improvement Period. Cumulative expenditures for OHM Holdings LLC and Transportation Insight LLC will meet or exceed Seven Million Dollars (\$7,000,000) by May 30, 2016, all of which will qualify and result in additional value for ad valorem tax purposes with values as determined by the Catawba County Tax Office, and that it will maintain in place, in good condition (ordinary wear and tear excepted) the Improvements for three (3) years after the last incentive payment is made to the Company by the County.
4. Company shall create a minimum of 50 new jobs at the Property by May 30, 2016 and maintain or make available a minimum of 50 new jobs in place for three (3) years after the last incentive payment is made to the Company by the County. A new job is defined

as permanent full-time employment that provides 1600 hours or more of work in any 12 month period.

SECTION II – COUNTY

5. On or before May 31, 2014 County shall deliver to Company an Opinion of Counsel for County, in form and substance reasonably satisfactory to Company, that this Agreement has been duly authorized, executed and delivered by the County; and stating that this Agreement complies with the terms and requirements of NCGS 158-7.1(a) and is binding upon and enforceable against the County with its terms; and evidence in the form of a Resolution or Resolutions, or official minutes, which the County duly adopted authorizing the economic development incentives set forth in this Agreement.
6. Payment of economic development incentives in accordance with this Agreement shall be made as follows:
  - a. The County will provide annual payments equal to 67% of the ad valorem taxes associated with the additional value (exclusive of rolling stock) in excess of \$1,115,700 (the current assessed value on included properties), as paid to the County for a 5 year period commencing with the taxes payable for the new tax values on January 1, 2015, and January 1 of the succeeding 4 years. In order to qualify for any incentives, a minimum of \$7,000,000 in cumulative expenditures on real and personal property must be made. The maximum assessed value on real and personal property that will qualify for grant purposes will be \$8,000,000.
  - b. In no event will the cumulative payments by the County exceed One Hundred Forty Two Thousand and Forty Dollars (\$142,040) in total for the 5 years or exceed Twenty Eight Thousand Four Hundred and Eight Dollars (\$28,408) in any individual year each year 2016-2020.

<b>Grant Year</b>	<b>Maximum Payment By County</b>
2016	\$28,408
2017	\$28,408
2018	\$28,408
2019	\$28,408
2020	\$28,408
<b>Total</b>	<b>\$142,040</b>

- c. Upon payment of ad valorem taxes by Company to the County for each of years 2015-2019, 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, the County will, within sixty (60) days, pay to Company an economic development incentive payment, the amount of which is calculated by multiplying by .67 times the total ad valorem tax revenue received by the County attributable to the value of the improvements made by Company pursuant to this Agreement in excess of the amount attributable to improvements already in place (\$1,115,700) and taxed on the site as of January 1, 2014. This same process will be followed

by the County and Company in each of the immediately following four (4) years.

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

### SECTION III - OTHER

7. Force Majeure. Notwithstanding the provisions of Paragraph 8, in the event Company is unable to meet the requirements of Paragraphs 3, 4 and 6 as a result of (i) an event of force majeure, including but not limited to fires, explosions, acts of God, acts of public enemy, insurrections, riots, terrorism, embargoes, labor disputes, including strikes, lockouts and job actions, or boycotts; (ii) the inability to obtain the governmental permits or approvals (including zoning) necessary for the acquisition of the land or undertaking and operating the Improvements after a good faith effort to obtain same has been made; (iii) shortages of materials or energy; (iv) changes in laws; or (v) other causes beyond the control of and arising without the fault or negligence of Company; 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 Company shall (a) have furnished the County on a timely basis, upon the occurrence of such event, a notice thereof, and (b) take all commercially reasonable steps necessary to relieve the effect of such event and to resume completion of the Improvements.
8. It shall be an Event of Default if any one or more of the following events shall occur for any reason whatsoever (and whether such occurrence shall be voluntary or involuntary or come about or be effected by operation of law or pursuant to or in compliance with any judgment, decree or order of any court or any order, rule or regulation of any administrative or governmental body):
  - a. If Company, except in the event of force majeure, shall commit a material breach of a material obligation hereunder (including without limitation, the obligation to meet the investment goals and maintaining the minimum number (50) of newly created jobs as set forth herein) and such breach shall continue for a period of sixty (60) or more days following the receipt of written notice from County;
  - b. If Companies fails to timely file Exhibit A, or Exhibit B on or before March 5 of each year, following and corresponding to the previous July 1<sup>st</sup> when taxes are billed, and any qualifying incentive would be due to Company, this shall be deemed a breach of the Agreement and, notwithstanding Section 9, below, the sole remedy will be that County will not owe Company any incentive that may have otherwise been due had that filing properly been made;

- c. If any material representation, warranty or other statement of fact contained in this Agreement or in any writing, certificate, report or statement furnished by Companies to County in connection with the transaction described in this Agreement, shall be false or misleading in any material respect when given;
  - d. If Company shall be unable to pay their debts generally as they become due; file a petition to take advantage of any insolvency statute; make an assignment for the benefit of creditors; commence a proceeding for the appointment of a receiver, trustee, liquidator or conservator of themselves or of the whole or any substantial part of their property; file a petition or answer seeking reorganization or arrangement of similar relief under the federal bankruptcy laws or any other applicable law or statute of the United States of America or any state;
  - e. If a Court of competent jurisdiction shall enter an order, judgment, or decree appointing a custodian, receiver, trustee, liquidator, or conservator of Company or of the whole or any substantial part of their properties, or approve a petition filed against Company 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 Company or of the whole or any substantial part of their properties; or
  - f. If Company 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 pertains to the facility contemplated by this Agreement.
9. Remedy: If an Event of Default occurs, the obligation of the County as set out herein shall terminate immediately.
10. Company and the County acknowledge that any monies appropriated and expended by the County for economic development incentives, as provided in this Agreement, are for a bona fide public purpose and are expended in good faith reliance on NCGS 158-7.1. In the event a Court of competent jurisdiction, after final appeal, rules to which either Company or the County is a party, that all monies expended by County pursuant to this Agreement were not offered and accepted in good faith and in compliance with NCGS 158-7.1 and, further, that such monies must be repaid, Company will make such repayment to the County. In the event one or more lawsuits are brought against the County or any County elected official, officer, agent or employee, or Company, challenging the legality of this Agreement, then the County and Company shall exercise their best efforts to defend against any and all such lawsuits. In any event, if Company are required to repay funds to County pursuant to this Section 9, the benefit of this Agreement to Company will have been lost and all further obligations of Company hereunder shall terminate.
11. All notices, certificates or other communications required or permitted to be given or served hereunder shall be deemed given or served in accordance with the provisions of this Agreement if the notice is (i) mailed in a sealed wrapper and is deposited in the United States mail, certified mail, return receipt requested, postage prepaid, or (ii) deposited with a national overnight courier service that retains receipts for its deliveries, properly addressed as follows:

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

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

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

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

12. This Agreement shall inure to the benefit of, and is binding upon, the County and Company and their respective successors and assigns. However, neither this Agreement, nor any rights, privileges, or claims created by this Agreement may be transferred by Company without the prior, written approval of the County, which approval will not be unreasonably withheld.
13. Except as otherwise provided in this Agreement, this Agreement may not be amended, changed, modified or altered except by written agreement of the parties.
14. If any provision of this Agreement is held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provisions of this Agreement.
15. This Agreement may be executed in any number of counterparts, each of which when so executed and delivered shall be deemed an original, and it shall not be necessary in making proof of this Agreement to produce or account for more than one such fully-executed counterpart.
16. Controlling Law and Venue. This Agreement is governed by and shall be construed in accordance with the laws of the State of North Carolina; venue of any action shall be in the general courts of justice in Catawba County, or if in Federal court in the Western District of North Carolina.
17. The term of this Agreement shall commence on the date of execution and expire upon satisfaction of Company reporting requirements, unless earlier terminated as provided herein.
18. Both Company 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 Company and County. As such, the doctrine of construction against the drafter shall have no application to this Agreement.

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

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

**Attest:**  
**(SEAL)**

By: \_\_\_\_\_ (Seal)  
\_\_\_\_\_

\_\_\_\_\_  
Barbara Morris, County Clerk

This document has been pre-audited in the manner required by the Local Government Budget and Fiscal Control Act.

\_\_\_\_\_  
Finance Director for the Catawba County

Approved as to form on behalf of Catawba County

\_\_\_\_\_  
Catawba County Attorney

**OHM HOLDINGS, LLC**

By: \_\_\_\_\_ (Seal)

D. Paul Thompson  
Manager

**STATE OF NORTH CAROLINA  
COUNTY OF CATAWBA**

I, \_\_\_\_\_ a Notary Public of said County and State, certify that Barbara Morris personally came before me this day and acknowledged that she is County Clerk of Catawba County, a North Carolina Body Politic in Nature, and that by authority duly given and as the act of the body, the foregoing instrument was signed in its name and by its Chair, sealed with its corporate seal and attested by her as its County Clerk.

Witness my hand and seal this \_\_\_\_\_ day of \_\_\_\_\_, 2014.

(SEAL)

\_\_\_\_\_  
Notary Public

My Commission Expires: \_\_\_\_\_

**STATE OF NORTH CAROLINA  
COUNTY OF CATAWBA**

I, \_\_\_\_\_ a Notary Public of said County and State, do certify that D. Paul Thompson, Manager of OHM Holdings, LLC, personally appeared before me this day and acknowledged on behalf of Company the voluntary due execution of the foregoing document, all for the purposes therein expressed.

Witness my hand and seal this \_\_\_\_\_ day of \_\_\_\_\_, 2014.

[Seal]

\_\_\_\_\_  
Notary Public

My commission expires: \_\_\_\_\_

**EXHIBIT A**  
Joint Economic Development Agreement  
Between the Catawba County and OHM Holdings, LLC

CERTIFICATE

**TO: Catawba County**

This Certificate is delivered pursuant to Section 1.1 of the Joint Economic Development Agreement (the "Agreement"), dated \_\_\_\_\_, 20\_\_, between the Catawba County ("County") and OHM Holdings, LLC (OHM Holdings, LLC is sometimes herein referred to as "Company"). Any capitalized term not otherwise defined herein shall have the meaning assigned to such term in the Agreement.

I, \_\_\_\_\_, do hereby certify, for and on behalf of Company, that:

- (a) Company has purchased the real property necessary for the up-fit of the Facility and the Improvements; and
- (b) Company will create, maintain and make available a minimum of 50 net new permanent full-time jobs prior to May 30, 2016 and the overall average wage of Company will equal or exceed the average wage requirement in Catawba County under the North Carolina Department of Commerce. Job requirements will include 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 as outlined by Education Matters; and
- (c) Company agrees to comply with the Calendar of Responsibilities listed below:

**Calendar of Responsibilities:**

By January 5: Company makes payment to the County according to Tax Listing filed by January 31<sup>st</sup> of the previous year unless extension is requested and approved for April 15<sup>th</sup>. Any extension request must be filed by January 31<sup>st</sup>.

By March 5: Company must provide Exhibit B, supporting documents and proof of payment as required within Agreement.

By April 15: Company must provide Real/Personal Property Tax listings to the County Tax Office.

By April 22: County Tax Office to provide Tax Listing on Specified Accounts.\*

By May 5: County reviews Company's documentation to ensure compliance.\*

\*Note: these are not Company responsibilities.

Dated at Catawba County, North Carolina, this \_\_\_\_ day of \_\_\_\_\_, 2014.

**OHM HOLDINGS, LLC**

BY: \_\_\_\_\_  
D. Paul Thompson, Manager

**EXHIBIT B**  
Joint Economic Development Agreement  
Between the Catawba County and OHM Holdings, LLC

**CERTIFICATE**

**TO: Catawba County**

This Certificate is delivered pursuant to Section 3, Section 4 and Section 6 of the Joint Economic Development Agreement ("the "Agreement") dated \_\_\_\_\_, 2014, between the Catawba County ("County") and OHM Holdings, LLC (OHM Holdings, LLC is sometimes herein referred to as "Company"). Any capitalized term not otherwise defined herein shall have the meaning assigned to such term in the Agreement.

Company does hereby certify that:

(a) The following improvements were made during the 20\_\_ Calendar Year: \_\_\_\_\_

\_\_\_\_\_;  
(b) The following permanent full-time jobs were created during the 20\_\_ Calendar Year: \_\_\_\_\_ (please attach the most recent quarterly Form NCUI 101);

(c) The average wage of all of those employed at the Hickory facility during the 20\_\_ Calendar Year is as follows: (Wage Forms Total Payroll divided by number of employees) \_\_\_\_\_;

(d) Total cumulative personal property valuation installed at the Hickory facility during the 20\_\_ Calendar Year \_\_\_\_\_;  
and

(e) Proof of taxes paid is attached to this certificate.

Dated at the Catawba County, North Carolina, this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

**OHM HOLDINGS, LLC**

BY: \_\_\_\_\_  
D. Paul Thompson, Manager

**Attachments (required):**

Current Year personal and real property Tax Listing information as reported to Catawba County Tax Office, Most recent quarterly Form NCUI 101, Proof of taxes paid in full.

**Calendar of Responsibilities:**

By January 5: Company makes payment to the County according to Tax Listing filed by January 31<sup>st</sup> of the previous year unless extension is requested and approved for April 15<sup>th</sup>. Any extension request must be filed by January 31<sup>st</sup>.

By March 5: Company must provide Exhibit B, supporting documents and proof of payment as required within Agreement.

By April 15: Company must provide Real/Personal Property Tax listings to County Tax Office.

By April 22: County Tax Office to provide Tax Listing on Specified Accounts.\*

By May 5: County reviews Company documentation to ensure compliance.\*

\*Note: these are not Company responsibilities.

## **MEMORANDUM**

**TO:** Catawba County Board of Commissioners

**FROM:** Finance and Personnel Subcommittee

**DATE:** April 21, 2014

**IN RE:** Appropriation of FEMA Disaster Recovery Funds

### **REQUEST**

The Finance and Personnel Subcommittee recommends the Board of Commissioners approve an appropriation of FEMA Disaster Recovery Funds for \$66,464.16 to reimburse expenditures needed to repair major damage to landfill property due to flooding on July 27, 2013.

### **BACKGROUND**

On July 27, 2013, Catawba County experienced severe storms resulting in significant flooding in all areas of the County including the Resource Recovery Facility (Blackburn Landfill). The Blackburn Landfill experienced 13 inches of rain in five and a half hours resulting in major damage to roads, storm culverts, side slopes, erosion control measures and fencing. The damage to the landfill took weeks to repair, costing \$76,137.00 in salaries, benefits, materials, and contracted services.

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

On February 4, 2014, the County received \$66,464.16 from the State of North Carolina, a disbursement of federal and state disaster recovery funds, to cover the costs of repairs at the Blackburn Landfill. This amount represents approximately 87% of the total repair expenditures. Staff requests the funds be appropriated as listed below to reimburse the expense accounts used for the non-budgeted, unexpected repair costs.

**RECOMMENDATION**

The Finance and Personnel Subcommittee recommends the Board of Commissioners approve an appropriation of FEMA Disaster Recovery Funds for \$66,464.16 to reimburse expenditures needed to repair major damage to landfill property due to flooding on July 27, 2013.

Appropriations:

Revenue

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

Expenditures

525-350200-812200	\$5,000.00
Overtime Wages	
525-350200-831090	\$35,257.31
Misc Operating Supplies	
525-350200-834005	\$10,206.05
Building Supplies	
525-350200-835010	\$2,000.00
Motor Fuels Diesel	
525-350200-842530	\$10,000.00
Repair & Maint-Other Equipment	
525-350200-870100	\$4,000.80
Small Tools & Minor Equipment	

## **MEMORANDUM**

To: Catawba County Board of Commissioners

From: Policy and Public Works Subcommittee

Date: April 21, 2014

Re: Balls Creek Area Water Service Engineering Contract Award

### **REQUEST**

The Policy and Public Works Subcommittee recommends the Board of Commissioners approve the engineering contract, attached, between Catawba County and McGill Associates P.A., for the design, bid, and bid award of the Balls Creek Area Water Service water project in the amount of \$310,000.

### **BACKGROUND**

As you may recall, in June 2013, the Board of Commissioners approved a Revolving Loan Agreement with the City of Newton for the Balls Creek Water Project. The Balls Creek Water Project is being developed at the request of the City of Newton to serve Highway 16 South, Balls Creek Rd. and Buffalo Shoals Rd., creating hydraulic loops within the City's water system with the purpose of improving water quality. The County will install, and the City will operate, the water line(s) described as the Balls Creek Water Project. The estimated cost of the project including design, permitting, fees and installation totals \$2,646,000. The County will pay the full amount of all costs reasonably necessary for the design and installation of the water line(s), with payment being made directly from County to the appropriate contractor. Under the Revolving Loan Program, the City agrees to reimburse the County 75% of the total Project cost, payable over a 10 year period, in equal annual installments, which will begin with the City's assumption of maintenance of the water line(s) in each portion of the Project.

In December 2013, the County advertised a Request for Qualifications for Engineering Services in accordance with North Carolina General Statutes. On January 30, 2014, Statements of Qualification were received from the following respondents:

Wright & Associates, Newton, NC  
Shield Engineering, Inc., Charlotte, NC  
McGill Associates, P.A., Hickory, NC  
TGS Engineers, Morganton, NC

The Selection Committee, consisting of Barry Edwards, Utilities and Engineering Director; Jack Chandler, Utilities and Engineering Assistant Director; Debbie Anderson, Purchasing Manager; and City of Newton representatives, Wilce Martin and Dusty Wentz, met on February 5, 2014 to review the Statements of Qualification and to select a firm to perform the engineering for the Project.

Based on the Committee members' familiarity with these firms, interviews were not required.

McGill Associates, P.A., Hickory, NC was selected as the top-ranking firm for the following reasons:

- In July 2013, McGill Associates performed a Preliminary Engineering Report of the proposed service area, including an extensive hydraulic study of the City's water system.
- McGill Associates has a high level of knowledge of City of Newton Utility Systems and this knowledge will facilitate the design of the project.
- The comfort level between the City of Newton staff and McGill Associates is critical to the success of the project.

The contract for engineering services with McGill Associates, P.A., includes the following services:

• Planning, Mapping, and Design Phase Services	\$180,000
o Easement Mapping	\$ 18,000
• Preliminary Site investigation Phase Services	\$ 37,000
• Permitting Phase Services	\$ 28,000
• Bidding and Award Phase Services	\$ 12,000
• NCDOT Project Coordination Phase Services	\$ 35,000
<hr/>	
Total Not to Exceed Fees	\$310,000

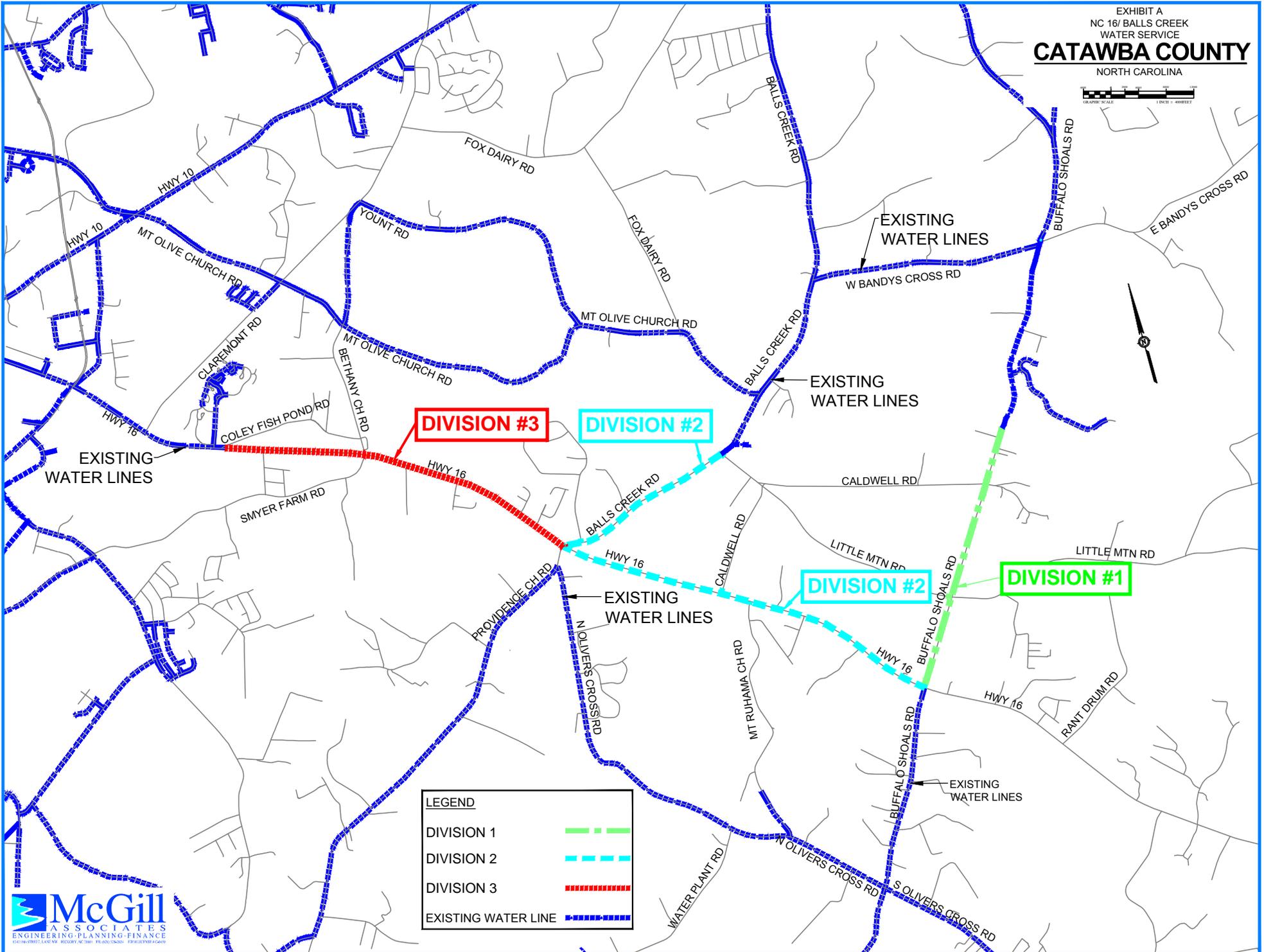
A significant portion of this project will be constructed along or within the NC Highway 16 right-of-way. Staff will take necessary precautions to ensure project design and development is in harmony with NC DOT planned improvements to NC Highway 16. Staff and McGill Associates will work with NC DOT in establishing project parameters along the Highway 16 corridor as the first step in project design.

#### **RECOMMENDATION**

The Policy and Public Works Subcommittee recommends the Board of Commissioners approve the engineering contract between Catawba County and McGill Associates P.A. for the design, bid, and bid award of the Balls Creek Area Water Service water project in the amount of \$310,000.

Attachments: Engineering Contract  
Project Map

EXHIBIT A  
 NC 16/ BALLS CREEK  
 WATER SERVICE  
**CATAWBA COUNTY**  
 NORTH CAROLINA



**DIVISION #3**

**DIVISION #2**

**DIVISION #2**

**DIVISION #1**

LEGEND	
DIVISION 1	
DIVISION 2	
DIVISION 3	
EXISTING WATER LINE	

**AGREEMENT FOR ENGINEERING SERVICES**

This AGREEMENT made and entered into this the 21<sup>st</sup> day of April 2014, by and between Catawba County (OWNER) and **McGill Associates, P.A.** (ENGINEER).

WHEREAS, the OWNER proposes to do certain work toward the accomplishment of the Project entitled **Balls Creek Area Water Service (Project)** as generally described in Attachment "A", and

WHEREAS, the OWNER desires to connect the Project to the existing City of Newton Water Distribution System at its current points of termination on Balls Creek Road, Buffalo Shoals Road and NC Highway 16, and

WHEREAS, the OWNER desires to partner with the CITY of Newton (CITY) to operate and maintain the Project as a contiguous extension of the remainder of the CITY's water system, and

WHEREAS, the OWNER desires to install the Project along North Carolina Department of Transportation (NCDOT) highways, and

WHEREAS, the OWNER recognizes that NCDOT plans to make improvements to NC Highway 16 throughout the sections of the Project which parallel NC Highway 16 and that two (2) roadway construction projects will modify the existing NC Highway 16 roadway from a two (2) lane road to a four (4) lane, median divided highway corridor with limited controlled access, and

WHEREAS, NCDOT has provided the preliminary design plans to the OWNER for the two (2) roadway improvements construction projects along NC Highway 16, and

WHEREAS, the OWNER desires to coordinate with NCDOT to plan the Project and design it for installation within the new NC Highway 16 right-of-ways and easements yet to be purchased by NCDOT, and

WHEREAS, the OWNER proposes to evaluate, in conjunction with the CITY and NCDOT the most advantageous and practical route for water line installation for the Project, and

WHEREAS, the OWNER desires to utilize the Project's final design documents to receive bids, award construction contract(s) and complete construction prior to and independent of any NCDOT roadway construction project, and

WHEREAS, the ENGINEER desires to render professional services in accordance with this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants and benefits contained herein, it is hereby mutually understood and agreed as follows:

## SECTION 1 - GENERAL SERVICES

### **The ENGINEER shall:**

- 1.1 The ENGINEER shall, as directed by the OWNER, provide professional engineering services for the OWNER in all phases of the Project; serve as OWNER's professional engineering representative for the Project; and shall give professional consultation and advice to OWNER during the performance of the services hereunder. The ENGINEER shall designate a representative to be the central point of contact with the OWNER during execution of the work included herein.
- 1.2 The ENGINEER shall provide all personnel required in performing the Project unless otherwise provided herein. Such personnel shall not be employees of or have any contractual relationship with the OWNER. All services rendered hereunder shall be performed by the ENGINEER or under his supervision and all personnel engaged in the Project shall be fully qualified under North Carolina law to perform such services.
- 1.3 The ENGINEER shall obtain and furnish, or cause to be obtained and furnished, approvals and permits from all governmental authorities having jurisdiction over the Project, unless otherwise agreed to herein.
- 1.4 The ENGINEER shall seek and obtain authorization from the OWNER or the OWNER's assignee before proceeding with the Project, or before performing any Additional Services as described in Section 3, or before performing any other services which would not be included in the fee for Basic Services set forth in Section 6 hereof, subject to OWNER's right to terminate as herein provided.
- 1.5 The ENGINEER shall comply with all existing federal, state and local laws and regulations regarding equal employment opportunity. The ENGINEER is further obligated to include all requirements hereunder in any subcontract written by him in association with this Agreement.

## **SECTION 2 - BASIC SERVICES**

### **2.1 PLANNING, MAPPING AND DESIGN PHASE**

- 2.1.1 Consult with the OWNER and the CITY to fully determine the OWNER's requirements for the project and to discuss the possible phasing, coordination, approvals and other preliminary matters.
- 2.1.2 Coordinate and conduct initial coordination meeting with the OWNER and CITY as needed to establish communication lines, meet with project team members, define project schedules and gather initial data and information from the OWNER.
- 2.1.3 Coordinate with the OWNER, CITY and NCDOT to evaluate the most advantageous and practical alignment for the water line installation for the Project.
- 2.1.4 Complete a route and topographical survey to include the location of existing utilities and other features in the proposed work area.
- 2.1.5 Evaluate the roadway design plans provided by NCDOT and coordinate water line design with the proposed roadway improvements to minimize conflicts. Plan anticipated conflicts with the NCDOT roadway project to minimize service interruption of the completed Project.
- 2.1.6 Prepare planning documents including preliminary design, material selections, and design calculations.
- 2.1.7 Review preliminary design with OWNER and CITY for concurrence and acceptance.
- 2.1.8 Prepare easement maps as required by the OWNER for acquisition of the necessary easements outside of the new NCDOT right-of-ways and easements. The scope of this contract will include preparation of an estimated twenty (20) easement maps at a fixed fee of \$900 per easement map.
- 2.1.9 Prepare complete bid documents, contract documents, technical specifications and construction drawings to detail the character and scope of the work including all design functions and coordination for all construction sequencing of the Project. This work shall include following:
  - a. Material selection, sizing and layout
  - b. Temporary grading and erosion control
  - c. Project details
  - d. Technical specifications and bid documents
- 2.1.10 Prepare final design calculations for submission to review agencies.

- 2.1.11 Review design documents described above with the OWNER and CITY for comments and approval at milestones throughout the design phase of the project.
- 2.1.12 Perform internal quality control and constructability reviews of the Project.
- 2.1.13 Prepare opinion of probable cost upon submission of plans and specifications to NCDENR Public Water Supply Section, and advise the OWNER of any adjustment of the Project cost caused by changes in scope, design requirements or construction costs.
- 2.1.14 Furnish two (2) hard copies and one (1) electronic copy of the final design documents to the OWNER and the CITY.

## **2.2 PRELIMINARY SITE INVESTIGATION PHASE**

In an effort to exercise greater control over construction costs for the Project and minimize opportunities for change orders while construction activities are ongoing, it is advisable to investigate the quantity, character and location of existing underground utilities along the Project's proposed alignment in urbanized or suspect areas.

Given the pre-disturbed nature of this Project area and prior facilities storing and selling petroleum products investigation for the presence of contaminated soils is also advisable.

- 2.2.1 Coordinate the provision of any subsurface investigation with geo-probes by others to test the Project site for the presence of contaminants.
- 2.2.1 Coordinate the provision of any subsurface investigation for location and quantity of existing underground utilities by others to test the Project site for underground utilities.

## **2.3 PROJECT PERMITTING PHASE**

- 2.3.1 Prepare and submit permit application and supporting documents to NCDENR Public Water Supply Section to obtain an Authorization to Construct.
- 2.3.2 Prepare and submit permit application, supporting documents, and permit fees to NCDENR Land Quality Section to obtain the erosion and sediment control approval.
- 2.3.3 Respond to review agency comments and modify documents as necessary to achieve permit approval.

## **2.4 BIDDING AND AWARD PHASE**

- 2.4.1 Assist the OWNER in advertising, receiving, opening and reviewing bids.
- 2.4.2 Schedule and conduct a Pre-Bid Conference with prospective bidders, the OWNER and the CITY to address any bidding questions.
- 2.4.3 Consult with, and advise the OWNER as to the acceptability of contractors and subcontractors and make recommendations as to the lowest, responsive, responsible bidder.
- 2.4.4 Assist the OWNER in the final preparation and execution of construction contracts and in checking Performance and Payment Bonds and Insurance Certificates for compliance.

## **2.5 NCDOT PROJECT COORDINATION PHASE**

- 2.5.1 Coordinate the Project design with the planned NCDOT construction plans for improvements to NC Highway 16. Submit maps, design drawings, specifications and other supporting documents to NCDOT to facilitate approval by NCDOT of an encroachment agreement for the project.
- 2.5.2 Coordinate and correspond with NCDOT as necessary and travel up to three (3) times to NCDOT's design offices in Raleigh, North Carolina to facilitate the review and approval of the Project within the NC Highway 16 construction project areas.
- 2.5.3 Provision of Project design to NCDOT for inclusion in roadway construction plans.

### **SECTION 3 - ADDITIONAL SERVICES**

If authorized by the OWNER, the ENGINEER will furnish or obtain from others additional services of the following types, which are not considered Basic Services under this Agreement.

- 3.1 Additional services resulting from significant changes in general scope of the Project or its design including, but not limited to, changes in size, complexity, OWNER's schedule, or character of construction. The ENGINEER and OWNER agree that time is of the essence in order to meet coordination deadlines. As such, the OWNER may initiate minor changes in the project scope to be incorporated by the ENGINEER, subsequent to the permit submittals, as not to impede progress toward the coordination deadlines. No work on any such changes shall occur by the ENGINEER unless preapproved by the OWNER.
- 3.2 Revising previously approved studies, reports, design documents, drawings or specifications, when such revisions are due to causes beyond the control of the ENGINEER.
- 3.3 Modifications to previously prepared design documents, drawings or specifications, when such revisions are due to revisions of the roadway project design by NCDOT.
- 3.4 Modification of roadway construction plans for inclusion of the Project into the same roadway construction plans.
- 3.5 Preparing documents for more than one project bid process. This Agreement assumes that all three (3) divisions outlined in Attachment "A" will be bid together.
- 3.6 Providing additional geotechnical and subsurface investigations, archeological surveys and any other environmental site surveys necessary for the construction of the project other than outlined in Section 2.2 of this agreement and approved during the project planning phase.
- 3.7 Preparing to serve or serving as a witness for the OWNER in any litigation, condemnation or other legal or administrative proceeding involving the Project.
- 3.8 Additional services in connection with the Project, including services normally furnished by OWNER and services not otherwise included in this Agreement.
- 3.9 Additional services in connection with administering project funding.
- 3.10 Additional coordination meetings with NCDOT in Raleigh beyond those listed in section 2.5.2 above.
- 3.11 Preparation of an Environmental Assessment should one become necessary.

## **SECTION 4 - OWNERS RESPONSIBILITIES**

### **The OWNER shall:**

- 4.1 Provide full information as to the requirements for the Project.
- 4.2 Assist the ENGINEER by placing at his disposal in a timely manner all available information under the control of the OWNER pertinent to the Project including previous documents and any other data relative to the evaluation, design, and construction of the Project.
- 4.3 Designate a person to act as OWNER's representative with respect to the work to be performed under this Agreement.
- 4.4 Guarantee access to and make all provisions for the ENGINEER to enter upon public and private property as required for the ENGINEER to perform his services under this Agreement, provided the same does not unreasonably interfere with the operation of the existing facilities.
- 4.5 Examine all studies, reports, sketches, estimates, specifications, drawings, proposals and other documents presented by the ENGINEER and render decisions and comments pertaining thereto within a reasonable time so as not to delay the services of the ENGINEER.
- 4.6 Obtain any right-of-way easements from public bodies, entities or persons necessary for satisfactory construction of the Project.
- 4.7 Obtain any subsurface geotechnical investigations or other types of testing and analysis needed for the Project, unless otherwise noted.
- 4.8 Pay for permit fees, and all costs incidental to advertising for bids, and receiving bids or proposals from licensed Contractors.
- 4.9 Give prompt notice to the ENGINEER whenever the OWNER observes or otherwise becomes aware of any defect in the Project.
- 4.10 Furnish approvals and permits from all governmental authorities having jurisdiction over the Project and such approvals and consents from others as may be necessary for completion of the Project, subject to the obligations of the ENGINEER outlined in Sections 1.3 and 2.3 of this Agreement.
- 4.11 Furnish, or direct the ENGINEER to provide necessary Additional Services as stipulated in Section 3 of this Agreement or other services as required.
- 4.12 Bear all costs incident to compliance with the requirements of this Section 4, except where Contractor will assume responsibility for the same.

## **SECTION 5 - PERIOD OF SERVICES**

- 5.1 Unless this Agreement has been terminated as provided in paragraph 7.1, the ENGINEER will be obligated to render services hereunder for a period, which may reasonably be required for the services described herein. The ENGINEER may decline to render further services hereunder if the OWNER fails to give prompt approval of the various phases as outlined. Upon receiving a written authorization to proceed, the ENGINEER shall provide the OWNER with a written schedule of completion for the services so authorized.
  
- 5.2 If the Project is delayed significantly for reasons beyond the ENGINEER's control, the various rates of compensation provided for elsewhere in this Agreement shall be subject to renegotiation.

## SECTION 6 - PAYMENT TO THE ENGINEER

### **6.1 PAYMENT FOR BASIC SERVICES**

6.1.1 The OWNER agrees to pay the ENGINEER for Basic Services as outlined in Section 2 the following lump sum fees, inclusive of all reimbursable expenditures.

<b>2.1</b>	<b>Planning, Mapping, and Design Phase Services</b>	<b>\$180,000</b>
	<b>Easement Mapping (20 Maps at \$900 each)</b>	<b>\$18,000</b>
<b>2.2</b>	<b>Preliminary Site Investigation Phase Services</b>	<b>\$37,000</b>
<b>2.3</b>	<b>Permitting Phase Services</b>	<b>\$28,000</b>
<b>2.4</b>	<b>Bidding and Award Phase Services</b>	<b>\$12,000</b>

6.1.2 The OWNER agrees to pay the ENGINEER for Basic Services as outlined in Section 2 the following **MAXIMUM NOT TO EXCEED** fees, inclusive of actual time spent and expenses incurred in accordance with the Engineer's Basic Fee Schedule, Attachment "B".

<b>2.5</b>	<b>NCDOT Project Coordination Phase Services</b>	<b>\$35,000</b>
------------	--	-----------------

The ENGINEER understands that the Fees listed above in 6.1.2 are a **MAXIMUM NOT TO EXCEED** amount and no individual hourly fee item shall be exceeded unless prior approval is granted by the OWNER.

6.1.3 Total Project Fees shall be as follows:

<b>Total Fee</b>	<b>\$310,000</b>
------------------	------------------

### **6.2 PAYMENT FOR ADDITIONAL SERVICES**

6.2.1 The OWNER will pay the ENGINEER for Additional Services as outlined in Section 3 an amount based on actual time spent and expenses incurred by principals and employees of the ENGINEER assigned to the Project in accordance with the attached ENGINEER's standard rate and fee schedule Attachment "B", which is subject to update on an annual basis.

### **6.3 TIMES OF PAYMENT**

6.3.1 The OWNER will make prompt monthly payments in response to the ENGINEER's monthly statements for services rendered under this Agreement.

### **6.4 GENERAL**

6.4.1 If the OWNER fails to make any uncontested payment due the ENGINEER on account of his services and expenses within sixty days after receipt of the ENGINEER's bill therefor, the ENGINEER may, after giving seven days written notice to the OWNER, suspend services under this Agreement until he has been paid in full all amounts due him on account of his services and expenses.

6.4.2 If the Agreement is terminated at the completion of any phase of the Basic Services called for under Section 2, progress payment to be made to the ENGINEER on account of services rendered shall constitute total payment for services rendered. If this Agreement is terminated during any phase of the Basic Services, the ENGINEER shall be paid for services rendered on the basis of a reasonable estimate of the portion of such phase completed prior to termination. In the event of any termination, the ENGINEER will be paid for all his reasonable expenses resulting from such termination, and for any unpaid reimbursable expenses.

6.4.3 If, prior to termination of this Agreement, any work designed or specified by the ENGINEER, under Section 2, is suspended in whole or in part for more than three months or is abandoned, after written notice from the OWNER, the ENGINEER shall be paid for services performed prior to receipt of such notice from the OWNER as provided in paragraph 6.4.2 for termination during any phase of his service.

## **SECTION 7 - GENERAL CONDITIONS**

### **7.1 TERMINATION**

- 7.1.1 In the event that the OWNER finds that it is inadvisable or impossible to continue the execution of the Project; or if the ENGINEER shall fail to fulfill in a timely and proper manner his obligations under this Agreement; or, if the ENGINEER shall violate any of the covenants, agreements, or stipulations of this Agreement; or if the services called for in this Agreement are not completed within the time period specified under Section 5, or if the ENGINEER becomes subject to a voluntary or involuntary adjudication of bankruptcy or makes a general assignment for the benefit of creditors; then the OWNER has the right to terminate at any time this Agreement or any task or phase of work being performed herein by providing ten (10) days written notice to the ENGINEER of such termination and specifying the effective date of such termination; provided, however, that during such period of ten (10) days the ENGINEER shall have the opportunity to remedy such failures or violations to avoid such termination.
- 7.1.2 In the event of termination, as provided herein, the ENGINEER shall be paid for all services performed and actual expenses incurred up to the date of termination pursuant to Section 6.4.2 herein.

### **7.2 OWNERSHIP OF DOCUMENTS**

- 7.2.1 All documents, including original drawings, estimates, specifications, field notes and data are and remain the property of the OWNER as instruments of services rendered by the ENGINEER. The OWNER shall be provided a set of reproducible prints of drawings, and copies of other documents, in consideration of which the OWNER will use them solely in connection with the Project, and not for resale. Re-use for extension of the Project, or for new projects shall require written permission of the ENGINEER, which permission shall not be unreasonably withheld, and shall entitle him to further reasonable compensation at a rate to be agreed upon by OWNER and ENGINEER at the time of such re-use. Any use or reuse, or any modification of the documents prepared and furnished by the Engineer, without written verification, completion, or adaptation by Engineer, as appropriate for the specific purpose intended, will be at the Owner's sole risk and without liability or legal exposure to Engineer or to its officers, directors, members, partners, agents, employees, and consultants; Owner shall indemnify and hold harmless Engineer and its officers, directors, members, partners, agents, employees, and consultants from all claims, damages, losses, and expenses, including attorneys' fees, arising out of or resulting from any use, reuse, or modification of the documents without written verification, completion, or adaptation by Engineer.

### **7.3 ESTIMATES**

7.3.1 Since the ENGINEER has no control over the cost of labor, materials, or equipment, or over the Contractor(s)' methods of determining prices, or over competitive bidding or market conditions, his estimates for cost for the Project provided for herein are to be made on the basis of his experience and qualifications and represent his best judgment as a design professional familiar with the construction industry, but the ENGINEER cannot and does not guarantee that proposals, bids or the Project construction cost (related to materials furnished or services rendered by third parties) will not vary from cost estimates prepared by him.

#### **7.4 INSURANCE AND CLAIMS**

7.4.1 The ENGINEER shall provide and maintain, at its own expense, during the term of this Agreement the following insurance covering its operations. Such insurance shall be provided by Insurer(s) satisfactory to the OWNER, and evidence of such insurance in the form of an industry-standard ACORD Certificate of Insurance satisfactory to the OWNER shall be delivered to the OWNER on or before the effective date of this Agreement. Such evidence shall specifically identify this Agreement and shall require that the OWNER be given written notice at least thirty (30) days in advance of any modification or termination of any insurance coverage.

7.4.2 AUTOMOBILE LIABILITY – Bodily injury and property damage liability insurance shall be carried covering all owned, non-owned, and hired automobiles for a limit of not less than \$1,000,000 Combined Single Limit for bodily injury and property damage in any one occurrence.

7.4.3 COMMERCIAL GENERAL LIABILITY – Bodily injury and property damage liability shall be carried to protect the ENGINEER performing work under this Agreement from claims of bodily injury or property damage which arise from operation of this agreement, whether such operations are performed by ENGINEER or anyone directly or indirectly working for or on ENGINEER'S behalf. The amounts of such insurance shall not be less than \$1,000,000 Combined Single Limit for bodily injury and property damage in any one occurrence with an aggregate limit of \$2,000,000. This insurance shall include coverage for product / completed operations liability, personal and advertising injury liability, and contractual liability.

7.4.4 PROFESSIONAL LIABILITY – Insuring against professional negligence / errors and omissions on a claims-made basis with policy limits of \$2,000,000 per claim / \$2,000,000 annual aggregate.

7.4.5 WORKERS' COMPENSATION – Workers' Compensation Insurance coverage shall be carried meeting the statutory requirements of the State of North Carolina, even if the ENGINEER is not required by law to maintain such insurance. Said Workers' Compensation Insurance coverage shall have at least the following limits of Employer's Liability coverage - \$500,000 per

accident limit, \$500,000 disease per policy limit, \$500,000 disease each employee limit.

- 7.4.6 **EXCESS / UMBRELLA LIABILITY** – Excess or Umbrella Liability coverage shall be carried providing coverage above the above stated limits of Automobile Liability, Commercial General Liability, and Workers' Compensation (Employer's Liability) in an amount of not less than \$3,000,000 Combined Single Limit for bodily injury and property damage in any one occurrence with an aggregate limit of \$3,000,000.

**7.5 SUCCESSORS AND ASSIGNS**

The OWNER and the ENGINEER each binds himself and his partners, successors, executors, administrators and assigns to the other party of this Agreement and to the partners, successors, executors, administrators and assigns of such other party, in respect to all covenants of this Agreement; except as above, neither the OWNER nor the ENGINEER will assign, sublet or transfer his interest in this Agreement without the written consent of the other. Nothing herein shall be construed as creating any personal liability on the part of any officer or agent of any public body which may be party hereto, nor shall it be construed as giving any rights or benefits hereunder to anyone other than the OWNER and the ENGINEER.

**7.6 ENTIRE AGREEMENT**

This Agreement constitutes the entire agreement between the OWNER and ENGINEER and supersedes all prior written or oral understandings. This Agreement may only be amended, supplemented or modified by a duly executed written instrument.

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

**McGILL ASSOCIATES, P.A.**

By: \_\_\_\_\_  
Andy C. Lovingood, PE  
Vice President

(SEAL)

**CATAWBA COUNTY BOARD OF COMMISSIONERS**

ATTEST: \_\_\_\_\_  
Barbara Morris  
Clerk

By: \_\_\_\_\_  
Katherine W. Barnes  
Chair

**PRE-AUDIT CERTIFICATION:**

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

By: Rodney N. Miller  
Rodney N. Miller  
Director of Finance

**APPROVED AS TO LEGAL FORM:**

By: Debra Bechtel  
Debra Bechtel  
County Attorney

STATE OF NORTH CAROLINA

AFFIDAVIT

COUNTY OF BUNCOMBE

I, Nancy B. Whitman (the individual attesting below), being duly authorized by and on behalf of Mc Gill Associates PA (the entity bidding on project hereinafter "Employer") after first being duly sworn hereby swear or affirm as follows:

1. Employer understands that E-Verify is the federal E-Verify program operated by the United States Department of Homeland Security and other federal agencies, or any successor or equivalent program used to verify the work authorization of newly hired employees pursuant to federal law in accordance with NCGS §64-25(5).

2. Employer is a person, business entity, or other organization that transacts business in this State and that employs 25 or more employees in this State. (mark Yes or No)

a. YES , or

b. NO

3. Employer understands that employers employing 25 or more employees in this State must use E-Verify. Each employer, after hiring an employee to work in the United States, must verify the work authorization of the employee through E-Verify in accordance with Article 2, Chapter 64 of the North Carolina General Statutes.

4. Employer's subcontractors comply with E-Verify, and if Employer is the winning bidder on this project Employer will ensure compliance with E-Verify by any subcontractors subsequently hired by Employer.

This 3rd day of October, 2013.

Nancy B Whitman  
Signature of Affiant

Print or Type Name: Nancy B Whitman

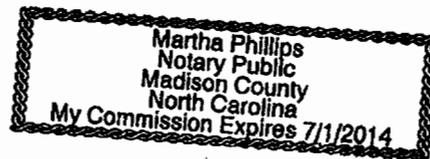
Title: CFO

State of North Carolina County of Buncombe

Signed and sworn to (or affirmed) before me, this the 3rd day of October, 2013.

My Commission Expires: 7-1-14 Martha Phillips  
Notary Public

(Affix Official/Notarial Seal)



**ATTACHMENT "A"**  
**PROJECT UNDERSTANDING**  
**BALLS CREEK AREA WATER SERVICE**

Catawba County, in cooperation with the City of Newton desires to make improvements to the City's distribution system in the Balls Creek Area. These improvements are for the purpose of creating hydraulic loops within the City's distribution system and expand the service area. Creation of the hydraulic loops will improve the water quality within the Balls Creek area by eliminating the existing dead-end water lines along Balls Creek Road (SR 1810), Buffalo Shoals Road (SR 1003) and NC Highway 16. The County and City have developed the project's construction divisions as generally described below:

Division 1: consists of approximately 10,500 linear feet of 12" water line(s) beginning at an existing County/City of Newton water line at Balls Creek Campground, extending along the northern side of Buffalo Shoals Road (SR 1003) in a south-westerly direction along Buffalo Shoals Road (SR 1003) to the intersection of Buffalo Shoals Road (SR 1003) and NC Highway 16 with stub out connections installed as agreed upon with the City.

Division 2: consists of approximately 21,500 linear feet of 12" water line(s) beginning at Buffalo Shoals Road (SR 1003) and NC Highway 16 then north on NC Highway 16 to Balls Creek Road (SR 1810) then east on Balls Creek Road (SR 1810) to the intersection with Little Mountain Road (SR 1815) to connect to the existing 12" City of Newton water line with stub out connections installed as agreed upon with the City.

Division 3: consists of approximately 13,500 linear feet of 12" water line(s) beginning at an existing City of Newton water line at the intersection of Claremont Road (SR 1801) and NC Highway 16, extending south along NC Highway 16 to the intersection of Balls Creek Road (SR 1810) and NC Highway 16, connecting to Balls Creek Division II with stub out connections installed as agreed upon with the City.

**ATTACHMENT "B"**  
**BASIC FEE SCHEDULE**

August 1, 2013

<b><u>PROFESSIONAL FEES</u></b>	<b><u>Hourly Rate</u></b>
Firm Principal	\$180.00
Program Services Manager I	\$140.00
Program Services Manager II	\$155.00
Senior Project Manager I	\$155.00
Senior Project Manager II	\$165.00
Project Manager I	\$130.00
Project Manager II	\$140.00
Project Engineer I	\$100.00
Project Engineer II	\$110.00
Project Engineer III	\$120.00
Engineering Associate I	\$ 80.00
Engineering Associate II	\$ 85.00
Engineering Technician I	\$ 75.00
Engineering Technician II	\$ 85.00
Engineering Technician III	\$ 95.00
Electrical Engineer I	\$100.00
Electrical Engineer II	\$110.00
Electrical Engineer III	\$120.00
Electrical Engineering Associate I	\$ 80.00
Electrical Engineering Associate II	\$ 85.00
Electrical Engineering Technician I	\$ 75.00
Electrical Engineering Technician II	\$ 85.00
Electrical Engineering Technician III	\$ 95.00
CADD Operator I	\$ 70.00
CADD Operator II	\$ 75.00
CADD Operator III	\$ 80.00
Construction Services Manager I	\$110.00
Construction Services Manager II	\$120.00
Construction Administrator I	\$ 85.00
Construction Administrator II	\$ 95.00
Construction Administrator III	\$105.00
Construction Field Representative I	\$ 70.00
Construction Field Representative II	\$ 75.00
Construction Field Representative III	\$ 80.00
Planner I	\$ 85.00
Planner II	\$ 95.00
Planner III	\$105.00

Surveyor I	\$ 85.00
Surveyor II	\$ 95.00
Surveying Associate I	\$ 70.00
Surveying Associate II	\$ 75.00
Survey Technician I	\$ 55.00
Survey Technician II	\$ 60.00
Survey Technician III	\$ 65.00
Administrative Assistant (I-III)	\$ 60.00
Accounting Assistant (I-II)	\$ 75.00

**I. EXPENSES**

- A. Mileage - \$0.56/mile
- B. Robotics/GPS Equipment - \$25/hr.
- C. Telephone, reproduction, postage, lodging, and other incidentals shall be a direct charge per receipt.

- II. ASSOCIATED SERVICES** - Associated services required by the project such as soil analysis, materials testing, etc., shall be at cost plus ten (10) percent.

## **MEMORANDUM**

To: Catawba County Board of Commissioners

From: Policy and Public Works Subcommittee

Date: April 21, 2014

Subject: Southeastern Catawba County (SECC) Water Supply Loop Phase III Pump Station and Storage Tank Bid Award

### **REQUEST**

The Policy and Public Works Subcommittee recommends the Board of Commissioners:

1. Award the contract for the pump station and storage tank construction of the SECC Water Supply Loop Phase III to Locke-Lane Construction, Stony Point, N.C., in the amount of \$1,838,643.00; and
2. Approve an Agreement for Construction Administration to Davis & Floyd, Inc. in the amount of \$128,700.00; and
3. Approve a budget revision in the amount of \$40,000.00.

### **BACKGROUND**

The Southeastern Catawba County (SECC) Water Supply Loop was developed in three separate but codependent phases. Phase I, commonly referred to as the NC Highway 150 waterline, follows along Sherrills Ford Rd., NC Highway 150 and East Maiden Rd.; Phase II follows along Kirsten St., Beverly Ln., Sigmon Dairy Rd., Rome Jones Rd., Knolls Dr., Dixie St., Business 321, Prison Camp Rd., Jack Whitener Rd., St. James Church Rd., and Campbell Rd. to Providence Mill Rd., and Phase III follows Providence Mill Rd., North Olivers Crossroad, South Olivers Crossroad, and portions of Buffalo Shoals Rd., Mt. Ruhama Church Rd., and Anderson Mountain Rd. Phases I and II were waterline installation only while Phase III was waterline installation and the construction of a pump station and storage tank. The waterline installation is complete for all three Phases and only the pump station and storage tank construction of Phase III remain.

Phase III of the SECC Water Supply Loop was bid in two stages. The first stage of Phase III was the waterline itself which is complete and in service. The second stage is comprised of the pump station and storage tank, Divisions I and II, respectively.

On March 27, 2014, Catawba County received bids for the construction of Divisions I and II of the SECC Water Supply Loop Phase III. Davis & Floyd, Inc. reviewed the bids received on March 27 for the pump station (Division I) and storage tank (Division II) from the following contractors:

1. Gilbert Engineering of Statesville, NC
2. Hickory Sand Co., Inc. of Hickory, NC

3. Hickory Construction Co., Inc. of Hickory, NC
4. Locke-Lane Construction of Stony Point, NC

Based upon a review of the bids and qualifications of the contractors, Davis & Floyd, Inc. recommends the construction of the pump station and storage tank be awarded to the lowest responsible responsive bidder, Locke-Lane Construction of Stony Point, NC, in the amount of \$1,838,643.00. Davis & Floyd's recommendation letter and bid tabulation sheet are attached.

Locke-Lane Construction is a Service Disabled Veteran Owned Small Business, as certified by the Department of Veteran Affairs, with unlimited general contractor's license in North Carolina and South Carolina. The owner and principle engineer is a West Point graduate in Civil Engineering and has an MBA from Columbus State University. Locke-Lane Construction has experience on multiple projects that are similar in nature to this project. The following is a list of those projects:

- Town of Taylorsville Booster: Pump Station and Water Storage Tanks, \$970,608.
- Charlotte-Mecklenburg Utilities: Mallard Creek WWTP Effluent Pump Station and Oxidation Pump Station, \$580,584.
- Pre-Con Corporation, Maiden, NC: Three Pre-Stressed Concrete Storage Tanks (76 feet in diameter), \$2,483,262.
- Fort Bragg Manhole Rehabilitation Project, \$3,002,813.

Also attached is an Agreement for Engineering Services between Catawba County and Davis & Floyd, Inc. in the amount of \$128,700.00. The Agreement considerations are construction inspection and observation, final certification of Division I and II of the SECC Water Supply Loop Phase III, which includes field observation and quality of work, review and approval of shop drawings, diagrams, specifications, schedules, sample guarantees, bonds and certificates, as well as review and approval of applications for payment, and preparation of final "As-Built" record drawings and quality assurance documents for the County, City of Hickory, and State of North Carolina.

The SECC Water Supply Loop Phase III project will require an additional \$40,000 in funding. Prior project authorization was budgeted in Fiscal year 2011/12. The current project balance is \$2,019,800.54. The bid award is \$1,838,643.00, construction administration is \$128,700, and 5% contingency is \$92,000, totaling \$2,059,343. Therefore, a budget revision in the amount of \$40,000 appropriating water and sewer available fund balance is requested.

### **RECOMMENDATION**

The Policy and Public Works Subcommittee recommends the Board of Commissioners:

1. Award the contract for the pump station and storage tank construction of the SECC Water Supply Loop Phase III to Locke-Lane Construction, Stony Point, N.C., in the amount of \$1,838,643.00; and
2. Approve an Agreement for Construction Administration to Davis & Floyd, Inc. in the amount of \$128,700.00; and

3. Approve a budget revision in the amount of \$40,000.00.

Appropriations:

Revenue

475-431100-690100 \$40,000.00

Fund Balance Applied

Expenditure

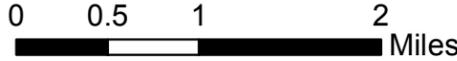
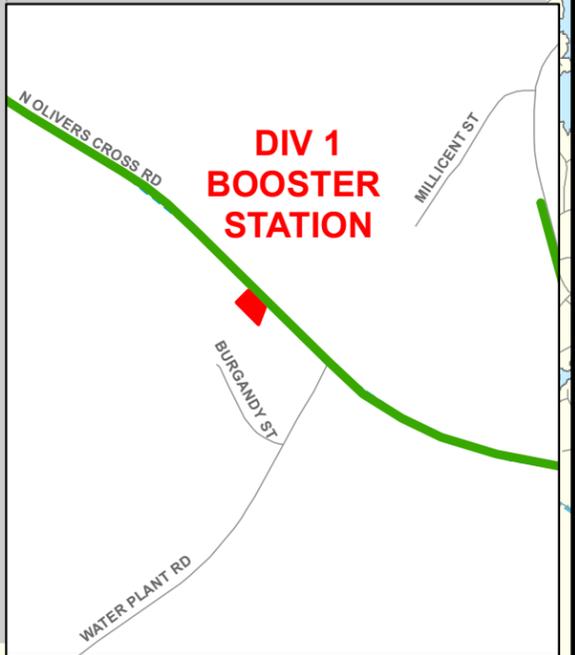
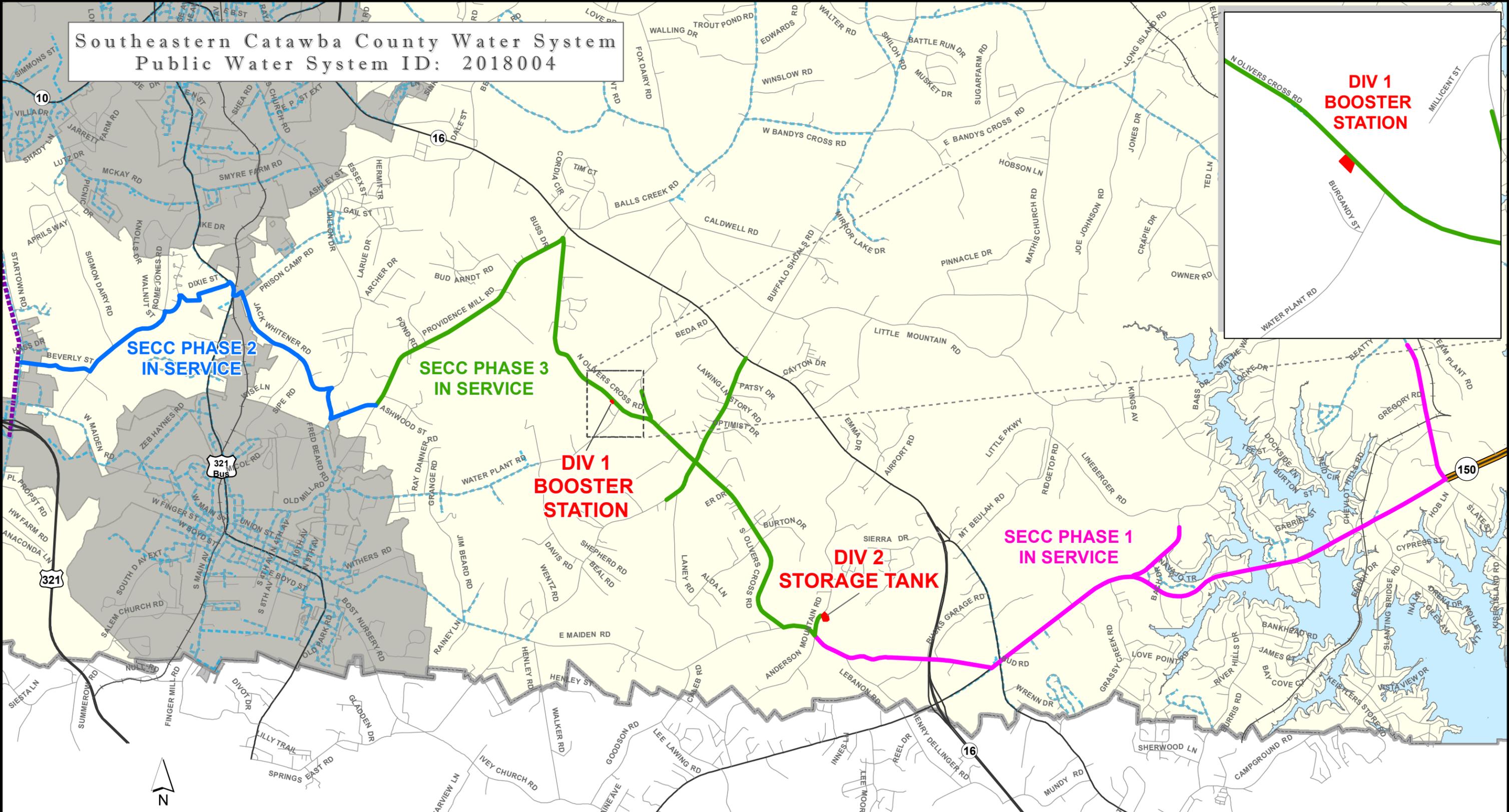
475-431100-989100-21020 \$40,000.00

SECC Water Supply Loop

Attachment: Recommendation and Bid Tabulation  
Construction Administration Contract  
Project Map

# Southeastern Catawba County Water System

## Public Water System ID: 2018004



### Legend

- + PROPOSED DIVISION PARCEL
- SECC PHASE (ALL IN SERVICE)
  - PHASE 1
  - PHASE 2
  - PHASE 3
- MOORESVILLE CONNECTOR
- HICKORY/MAIDEN TRANSMISSION MAIN
- - - EXISTING WATER LINE
- LOCAL ROAD
- US AND STATE HIGHWAY
- LAKE
- + CITY BOUNDARY W/ETJ
- + COUNTY BOUNDARY



This map product was prepared from the Catawba County, NC, Geographic Information System. Catawba County has made substantial efforts to ensure the accuracy of location and labeling information contained on this map. Catawba County promotes and recommends the independent verification of any data contained on this map product by the user. The County of Catawba, its employees and agents disclaim, and shall not be held liable for any and all damages, loss or liability, whether direct, indirect or consequential which arises or may arise from this map product or the use thereof by any person or entity.

# DAVIS & FLOYD

March 27, 2014

Mr. Barry Edwards, PE  
Utilities & Engineering Director  
Catawba County  
100A SW Blvd  
Newton, NC 28658

Re: Request for Authorization to Award  
SECC Phase III Divisions I & 2  
D&F Job Number: 041012.03

Dear Mr Edwards:

Enclosed for your review and approval is a copy of the tabulation of bids for all bidders. We have thoroughly evaluated the bid by the apparent low bidder, **Locke-Lane Construction**, and have determined them to be responsive and responsible, and that the contract price is considered fair and reasonable.

We hereby request Catawba County's authorization to award the construction contract to **Locke-Lane Construction** in the amount of **\$1,838,643.00**

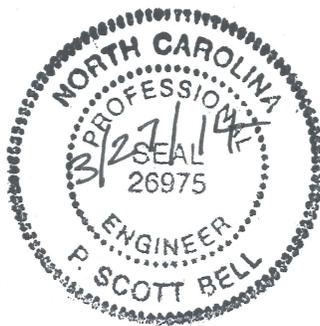
If you have any questions, please call me at (828) 322-2290.

Very truly yours,

DAVIS & FLOYD, INC.



P. Scott Bell, PE  
Senior Project Manager



Enclosures  
Bid Tabulation

Engineering | Architecture | Environmental | Laboratory

1073 13<sup>th</sup> Street SE Hickory, NC 28602-4165 [828] 322 2290

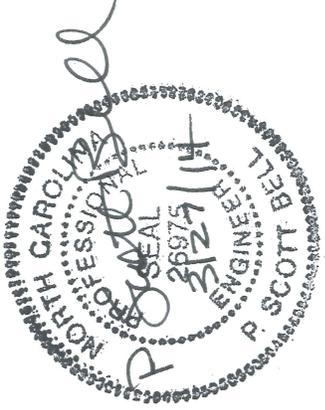
davisfloyd.com

**BID TABULATION SHEET**

PROJECT: SECC Phase III Divisions 1 & 2  
Project No. 041012.03  
DATE: March 27, 2014  
Bid Open: March 27, 2014 @ 11:00 am

DIVISION: Civil		SHEET 1 OF 1		BIDDERS					
ITEM	DESCRIPTION	DATE: 3/27/14	QUANTITY	UNIT	LOCKE LANE CONSTRUCTION 5063 Taylorsville Hwy Stony Point, NC 28678	HICKORY CONSTRUCTION CO PO Box 1769 Hickory, NC 28603	GILBERT ENGINEERING 638 South Meeting Street Statesville, NC 28677	HICKORY SAND CO., INC. 1490 South Center Street Hickory, NC 28602	AMOUNT
					UNIT PRICE	AMOUNT	UNIT PRICE	AMOUNT	UNIT PRICE
1	Division I Pump Station		1	LS	\$ 1,011,254.00	\$ 1,011,254.00	\$ 1,110,830.00	\$ 1,110,830.00	\$ 1,169,500.00
2	Division II IMG Ground Storage Tank		1	LS	\$ 827,389.00	\$ 827,389.00	\$ 1,060,180.00	\$ 1,060,180.00	\$ 1,199,500.00
	Total Base Bid				\$ 1,838,643.00	\$ 1,838,643.00	\$ 2,171,010.00	\$ 2,171,010.00	\$ 2,369,000.00
	Contingency - 5%				\$ 92,000.00	\$ 92,000.00			
	Construction Administration				\$ 128,700.00	\$ 128,700.00			
	Project Total - Base				\$ 2,059,343.00	\$ 2,059,343.00			

ALTERNATE 1	QUANTITY	UNIT	PRICE	AMOUNT
Rock Removal	100	CY	\$ 95.00	\$ 9,500.00
			\$ 70.00	\$ 7,000.00
			\$ 120.00	\$ 12,000.00
			\$ 250.00	\$ 25,000.00



## AGREEMENT FOR CONSULTANTING SERVICES

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

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

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

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

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

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

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

### Article 1 - Scope of Work/Services

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

- 1.1 Make periodic visits to the site as necessary to observe as an experienced and qualified design professional the progress and quality of the Contractor's work and to determine in general if the work is proceeding in accordance with the Contract Documents. The Consultant shall not be responsible for the means, methods, techniques, sequences or procedures of construction selected by the contractor(s) or the safety precautions and programs, incident to the work of the contractors. During such visits and on the basis of his on-site observation, the Consultant shall keep the Client informed of the progress of the work, and shall determine if such work is proceeding in accordance with the Contract Documents.
- 1.2 Review Shop Drawings and samples, the results of tests and inspections and other data which any Contractor is required to submit, but only for conformance with the design concept of the Project and compliance with the information given in the Contract Documents; determine the acceptability of substitute materials and equipment proposed by Contractors; and receive and review (for general content as required by the Specifications) maintenance and operating instructions, schedules, guarantees, bonds and certificates of inspection which are to be assembled by Contractors in accordance with the Contract Documents.
- 1.3 Issue all instruction of the Client to Contractors; prepare routine change orders as required; as the Client's representative, require inspection of testing of the work; act as interpreter of

the requirements of the Contract Documents and judge the performance by the parties and make decisions on all claims of the Client and the Contractors relating to the execution and progress of the work and all other related matters and questions; but the Consultant shall not be liable for the results of any interpretations of decisions rendered by it in good faith.

- 1.4 Based upon on-site observations as an experienced and qualified design professional, and on review of Contractors' applications for payment and the accompanying data and schedules, determine the amounts owing to Contractors and approve in writing payments to Contractors in such amounts such approvals of payment will constitute a representation to the Client, based on such observations and review, that the work has progressed to the point indicated and that, to the best of Contractor's knowledge, information and belief, the quality of the work is in accordance with the Contract Documents (subject to an evaluation of the work as a functioning Project upon Substantial Completion, to the results of any qualifications stated in the approval), but by approving an application for payment the Consultant will not be deemed to have represented that it has made any examination to determine how or for what purposes any Contractor has used the monies paid on account of the contract price, or that title to any of the Contractor's work, materials or equipment has passed to the Client free and clear of any lien, claims, security interests or encumbrances.
- 1.5 Conduct an inspection to determine if the Project is substantially complete and a final inspection to determine if the Project has been completed in accordance with the Contract Documents and if each Contractor has fulfilled its obligations so that the Consultant may recommend in writing, final payment to each Contractor.
- 1.6 Based on observations, Consultant may disapprove of or reject Contractor(s) work while it is in progress if Consultant believes the work will not produce a completed Project that conforms generally to the Contract Documents or will prejudice the integrity of the design concept of the Project as reflected in the Contract Documents.
- 1.7 The Consultant's responsibilities shall not relieve the contractor of contractor's obligation to perform the work in conformity with the drawings and specifications and in a workmanlike manner; and shall not make the Consultant an insurer of the contractor's performance.
- 1.8 Revise Drawings to show those changes made during the construction process, based on marked-up prints, drawings and other data furnished by the Contractors. Furnish the original "Record Drawings" to the Client within ninety (90) days of Client's project acceptance.

## Article 2 - Period of Service

- 2.1 The Consultant's period of service shall begin upon the authorization of the Client for each task of work and shall continue until the final task is completed.
- 2.2 If the Client requests modifications or changes in the scope of the Project, the time of performance, outlined in Paragraph 2.3 below, shall be appropriately adjusted.
- 2.3 Time estimate: 300 days
- 2.4 Delays: Consultant shall not be liable for delays or failure to perform its Services caused directly or indirectly by circumstances beyond Consultant's control, including but not limited to, acts of God, fire, flood, war, sabotage, accident, labor dispute, shortage, government action including regulatory requirements, changed conditions, delays resulting from actions or inactions of Client

or third parties, site inaccessibility or inability of others to obtain material, labor, equipment, or transportation. Should any of the above occur, the date for Completion or any other milestone date shall be adjusted for such delay in accordance with Article 6, provided the Consultant reports the delay to the Client within a reasonable time of its' discovery.

### Article 3 – Payments/Compensation to the Consultant

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

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

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

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

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

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

### Article 4 – Services by Consultant

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

state, and local laws, regulations and ordinances which are in effect on the date of execution of this Agreement.

- 4.2 *Estimates.* Any opinions of probable construction or implementation costs, financial evaluations, feasibility studies or economic analyses prepared by Consultant will represent its professional judgment based on its experience and available information. However, Client recognizes that Consultant has no control over costs of labor, material, equipment or services furnished by others or over market conditions or contractors' methods of determining prices, and that any evaluation of a facility to be constructed or work to be performed is speculative. Accordingly, Consultant does not guaranty that proposals, bids or actual costs will not vary from opinions, evaluations or studies submitted by Consultant. If the Client wishes greater assurance as to probable construction costs, Client shall employ an independent cost estimator.
- 4.3 *Hazardous materials.* Consultant's services do not include directly or indirectly performing or arranging for the detection, monitoring, handling, storage, removal, transportation, disposal or treatment of petroleum or petroleum products (collectively called "Oil") or of any contaminated non-hazardous, hazardous, toxic, radioactive or infectious substances, including any substances regulated under RCRA or any other federal or state environmental laws (collectively called "Hazardous Materials"). Unless provisions have been incorporated into this Agreement to provide for the handling of Oil or Hazardous Materials, the discovery or reasonable suspicion of Oil or Hazardous Materials or hazardous conditions at a site where Consultant is to perform services shall entitle Consultant to suspend its services immediately, subject to mutual agreement of terms and conditions applicable to any further services, or to terminate its services and to be paid for services previously performed.
- 4.4 *Other contractors.* Consultant shall not have any duty or authority to direct, supervise or oversee any contractors of Client or their work or to provide the means, methods or sequence of their work or to stop their work. Consultant's services and/or presence at a site shall not relieve others of their responsibility to Client or to others. Consultant shall not be liable for the failure of Client's contractors or others to fulfill their responsibilities.
- 4.5 *Health and safety.* Consultant shall not be responsible for health or safety programs or precautions related to Client's activities or operations, Client's other contractors, the work of any other person or entity, or Client's site conditions. Consultant shall not be responsible for inspecting, observing, reporting or correcting health or safety conditions or deficiencies of Client or others at Client's site.
- 4.6 *Litigation support.* Consultant will not be obligated to provide expert witnesses or other litigation support related to its services, unless expressly agreed in writing. In the event Consultant is required to respond to a subpoena, government inquiring or other legal process related to the services in connection with a proceeding to which it is not a party, Client shall reimburse Consultant for its costs and compensate Consultant at its then standard rates for the time it incurs in gathering information and documents and attending depositions, hearings, and the like.
- 4.7 *Confidential information.* Although Consultant generally will not disclose without Client's consent information provided by Client or developed by Consultant in the course of its services and designated by Client as confidential (but not including information which is publicly available, is already in Consultant's possession, or is obtained from third parties), Consultant shall not be liable for disclosing such information if it in good faith believes such disclosure is required by law or is necessary to protect the safety, health, property or welfare of the public. Consultant shall notify Client (in advance, except in emergency) of any such disclosure.

- 4.8 *No warranty.* No warranties or guaranties, express or implied, are or will be made with respect to any goods or services provided under this Agreement, and any implied warranties or merchantability or fitness for a particular purpose are expressly disclaimed.
- 4.9 *Certifications.* Any certifications or representations which Consultant may be required to make shall be limited to the existence of conditions which Consultant could, within the scope of its services, reasonably ascertain, and shall be based on Consultant's then current knowledge, information, and belief.

#### Article 5 – Responsibilities of Client

- 5.1 *Client requirements.* Client, without cost to Consultant, shall:
- a) Provide or arrange for access and make all provisions for Consultant to enter any site where services are to be performed.
  - b) Furnish Consultant data prepared by others including with limitation exploration and tests of subsurface conditions at or contiguous to the site, drawings of physical conditions in or relating to existing surface or subsurface structures at or contiguous to the site or hydrographic surveys as may be in the possession of the Client.
  - c) Furnish Consultant environmental assessments, audits, investigations and impact statements and other relevant environmental or cultural studies as to the site and adjacent areas as may be in the possession of the Client.
  - d) Comply with all laws and provide any notices required to be given to any government authorities in connection with the services, except for such notices Consultant has expressly agreed in writing to give.
- 5.2 *Hazards.* Client does not have any knowledge of Hazardous Materials or unusually hazardous conditions at the site or of contamination of the site by Oil or Hazardous Materials.
- 5.3 *Documents.*
- a) All reports, notes, calculations, data, drawings, estimates specifications and other documents (collectively "Documents") and electronic files prepared by Consultant are instruments of Consultant's professional services and not products and shall remain Consultant's property. Documents or electronic files provided to Client are for Client's use only for the purposes disclosed to Consultant and Client shall not transfer them to others or use them or permit them to be used for any extension of the services or for any other project or purpose for which they were not prepared, without Consultant's express written consent. Any reuse without written consent shall be at the Client's or the user's sole risk and without liability or legal exposure to Consultant or their independent contractors or consultants.
  - b) Copies of Documents that may be relied upon by Client are limited to the printed copies (also known as hard copies). Electronic files in electronic media format of text, data, graphics, or of other types that are furnished by Consultant to Client are only for convenience of Client. Any conclusion or information obtained or derived from such electronic files will be at the user's sole risk.
  - c) When transferring electronic files, Consultant makes no representations as to long-term capability, usability, or readability of such files.

#### Article 6 – Changes; Delays; Excused Performance

- 6.1 *Changes*

- a) Unless this Agreement expressly provides otherwise, Consultant's compensation and time for rendering services represent its professional estimate, taking into account the costs, effort and time it expects to expend in performing the services as it currently understands them to be, based on its reasonable assumption of the conditions and circumstances under which the services will be performed, and based on its anticipation of the orderly and continuous progress of the Work and of the Project through completion of the Work. Unless specific periods of time or specific dates for providing services are specified in this Agreement, Consultant's obligation to render services hereunder will be for a period which may reasonably be required, using due and reasonably diligence consistent with sound professional practices, for the completion of said services.
- b) As services are being performed, conditions may change or circumstances outside of Consultant's reasonable control (including changes of laws and Client directed changes) may develop which would require Consultant to expend additional costs, effort and time to complete the services, in which case Consultant will notify Client and an equitable adjustment will be made to Consultant's compensation and time for performance.
- c) If Client fails to give prompt written authorization to proceed with any task or phase of services after completion of the immediately preceding task or phase, or if Consultant's services are delayed through no fault of Consultant, in each case for a period of ninety (90) days or longer, Consultant, may, after giving seven (7) days written notice to Client, suspend services under this Agreement. An equitable adjustment to Consultant's compensation and time for performance will be made upon Client's authorization or directive for Consultant to resume performance of its services.
- d) If Consultant's services are suspended or delayed in whole or in part by Client, or if Consultant's services are extended by actions or inactions of Client or its contractor for more than ninety (90) days through no fault of Consultant, Consultant shall be entitled to an equitable adjustment of rates and amounts of compensation to reflect reasonable costs incurred by Consultant in connection with, among other things, such delay or suspension and reactivation, and the fact that the time performance has been revised.
- e) In the event conditions or circumstances require the services to be suspended or terminated, Consultant shall be compensated for services previously performed and for costs reasonably incurred in connection with the suspension or termination.

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

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

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

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

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

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

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

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

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

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

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

#### Article 8 – Miscellaneous Provisions

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

Client:  
Catawba County

Consultant:  
Davis & Floyd, Inc.

Attention: County Manager  
PO Box 389  
Newton, NC 28658

Attention: Vice President  
1073 13<sup>th</sup> Street SE  
Hickory, NC 28602

- 8.2 *Assignment, etc.* Neither Client nor Consultant shall assign or transfer any rights or obligations under this Agreement, except that Consultant may assign this Agreement to its affiliates and may use subcontractors in the performance of its services. Nothing contained in this Agreement shall be construed to give any rights or benefits to anyone other than Client and Consultant, without the express written consent of both parties. The relationship between Client and Consultant is that of independent contracting parties, and nothing in this Agreement or the parties' conduct shall be construed to create a relationship of agency, partnership or joint venture.
- 8.3 *Governing law.* This Agreement shall be governed by and construed in accordance with the laws of North Carolina, venue Catawba County.
- 8.4 *Headings.* The headings in this Agreement are for convenience only and are not part of the agreement between the parties.
- 8.5 *Entire agreement, etc.* The written document of which these General Conditions are a part is the entire agreement between the parties, and supersedes all prior agreements. Any amendments to this Agreement shall be in writing and signed by both parties. In no event will the printed terms on any purchase order, work order or other document provided by Client modify or amend this Agreement, even if it is signed by Consultant, unless Consultant signs a written statement expressly indicating that such terms supersedes the terms of this Agreement. In the event of an inconsistency between these General Conditions and any other writings which comprise this Agreement, the order of precedence shall be as follows: (1) Proposal/Agreement, (2) Supplemental Conditions (if applicable), (3) these General Conditions, (4) Scope of Services, and (5) Other exhibits and attachments (if applicable).
- 8.6 *Severability.* Any provisions of this Agreement held in violation of any law or ordinance shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon the parties. Consultant and Client shall in good faith attempt to replace any invalid or unenforceable provisions of this Agreement with provisions that are valid and enforceable and that come as close as possible to expressing the intention of the original provisions.
- 8.7 *Waiver.* A waiver or failure to strictly enforce any breach or omission shall not constitute a waiver of any subsequent breach or omission unless specifically agreed to in writing by the parties.
- 8.8 *Survival.* All obligations arising prior to termination of this Agreement and all provisions of this Agreement allocating responsibility and liability between Client and Consultant shall survive the completion of the services hereunder and the termination of this Agreement.
- 8.9 *Third party beneficiaries.* Nothing contained in this Agreement shall create a contractual relationship with or a cause of action in favor of a third party against either the Client or Consultant. Consultant's services under this Agreement are being performed solely for the client's benefit, and no other entity shall have any claim against Consultant because of this Agreement or the performance of services hereunder.
- 8.10 *Statute of limitations.* The statute of limitations shall commence to run not later than the relevant date of substantial completion of the Work.

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

CATAWBA COUNTY BOARD OF COMMISSIONERS

\_\_\_\_\_  
Katherine W. Barnes, Chair

Attest: Seal

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

DAVIS & FLOYD, INC.

\_\_\_\_\_  
Danny Ware, Vice President

Witness:

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

Date: \_\_\_\_\_

\_\_\_\_\_  
Rodney N. Miller, Finance Director

**APPROVED AS TO FORM:**

Date: \_\_\_\_\_

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