

## AGENDA

Catawba County Board of Commissioners Meeting  
Monday, August 1, 2016, 9:30 a.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 July 18, 2016.](#)
5. Recognition of Special Guests.
6. Public Comments.
7. Presentations:  
National Association of Counties (NACo) 2016 Achievement Awards.  
Presented to:
  - (1) Tax Department – “Educators of Revaluation” – presented to Tax Administrator Mark Logan and staff members Danny Clippard, Randy Triplett, Lori Wray, John Shrell, Sally Lackey, Jim Treffinger, Georganna Stephens and Gail Perry.
  - (2) Technology/Budget Departments – “Performance Dashboard” - presented to Chief Information Officer Rick Pilato and Budget Manager Jennifer Mace and staff members Lee Yount, Shawn Cruse and Paarth Mehta.
  - (3) Library – “TechConnect” - presented to Library Director Suzanne White and staff members Siobhan Loendorf and Shelley Orr.
  - (4) Social Services – presented to Social Services Director John Eller and:
    - a. “Trauma Informed Practice in Child Welfare” – staff members Jim Wachsmuth and Janine Szymanski.
    - b. “Emancipated Youths Website” – staff members Dakotah Morel, Jordan Vinson, Melonae Spencer and Marcie Edler.
8. Public Hearing:
  - a. [Close-Out Public Hearing for the 2015 Commerce Fellows Training Program. Presented by Laurie Powell, Western Piedmont Council of Governments Community Development Administrator.](#)
  - b. [Claremont Spec Building Settlement, Economic Development Agreement with DAE Systems and Applicable Resolution, and Creation of Spec Building Fund. Presented by Scott Millar, President, and Julie Pruett, Director of Business Recruitment, Catawba County Economic Development Corporation.](#)
9. [Appointments.](#)
10. Consent Agenda:
  - a. [2016 Limited English Proficiency Plan \(LEP\).](#)
  - b. [Sole Source Exemption – Deployer 800 Alternate Daily Cover Machine.](#)

- c. Tax Refund Request.
  - d. North Carolina Housing Finance Agency 2016 Urgent Repair Program.
11. Departmental Reports.
- A. Finance/Catawba Valley Medical Center (CVMC).  
*Refunding of CVMC Bonds. Presented by CVMC Senior Vice-President of Finance/Chief Financial Officer David Boone.*
  - B. Utilities and Engineering.  
*Subtitle D Municipal Sanitary Landfill Cell Unit 3 Phase 2 Engineering Contract Award. Presented by Utilities and Engineering Director Barry Edwards, Assistant Utilities and Engineering Director Jack Chandler and Purchasing Manager Debbie Anderson.*
12. Other Items of Business.
13. Attorneys' Report.
14. Manager's Report.  
Board Meeting Space.
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, August 15, 2016 at 7:00 p.m. **in the 2<sup>nd</sup> Floor Meeting Room of the Government Center in Newton due to the Soldiers Reunion**

## Memorandum

To: Catawba County Board of Commissioners

From: Laurie Powell, WPCOG Community Development Administrator

Date: August 1, 2016

Re: **Close-out Public Hearing for the 2015 Commerce Fellows Training Program 02-D-2681**

### REQUEST

Staff requests the Board of Commissioners conduct a public hearing to receive public comments regarding the closeout of the 2015 Community Development Block Grant (CDBG) Commerce Fellows Training Grant 02-D-2681 and consider approval of the applicable Certificate of Completion.

### BACKGROUND

The purpose of this \$27,476.01 CDBG grant assisted Catawba County and its non-entitlement local governments by engaging in high quality professional development and training with an emphasis on improving opportunities for low and moderate income individuals. This was offered by the UNC School of Government. All activities have been completed. CDBG funds financed 100% of the total project costs.

Five (5) Catawba County employees: Susan Ballbach, Brian Drum, Nathalia Queen, Jodi Stewart, and Korey Fisher-Wellman, along with Claremont City Manager Catherine Renbarger and City of Newton Planning Director Randolph Williams attended various classes throughout the year at the University of North Carolina School of Government, including the Community Development Academy Course, the Municipal and County Administration Course, and the Supervisory Management Course. All participants were required to report to the NC Department of Commerce a summary of how they and their communities benefitted from their participation. The grant paid for the schooling, accommodations, travel and meals.

The County had no match for this grant and CDBG funds financed 100% of the total project costs. The County expended \$25,717.48 of the \$27,476.01 awarded and will be de-obligating \$2,258.53 back to the North Carolina Department of Commerce, Rural Economic Development. The funds being de-obligated were available, but not needed for, travel and meal expenses.

### RECOMMENDATION

Staff recommends the Board of Commissioners conduct a public hearing to receive public comments regarding the closeout of the 2015 Community Development Block Grant (CDBG) Commerce Fellows Training Grant 02-D-2681 and consider approval of the applicable Certificate of Completion.

CATAWBA COUNTY  
COMMUNITY DEVELOPMENT BLOCK GRANT PROJECT  
NOTICE OF CLOSE OUT PUBLIC HEARING

Catawba County will conduct a Public Hearing regarding the closeout of the 2015 Community Development Block Grant (CDBG) Commerce Fellows Building Community Grant 02-D-2681. This \$27,476.01 CDBG grant assisted Catawba County and its non-entitlement local governments by engaging in high quality professional development and training with an emphasis on improving opportunities for low and moderate income individuals. This was offered by the UNC School of Government. All activities have been completed. CDBG funds financed 100% of the total project costs.

This public hearing will be held by the Catawba County Board of Commissioners on Monday, August 1, 2016 at 9:30 a.m. at the 1924 Courthouse in downtown Newton. Interested citizens are encouraged to attend this hearing.

Any persons with a disability needing special accommodations should contact Barbara Morris at (828)465-8990 or TDD# (828) 465-8200 by Friday, July 29, 2016 at 5:00 p.m.

Catawba County is an Equal Opportunity Employer who promotes Fair Housing and encourages small and minority owned businesses to bid and work on all projects.

Esta información está disponible en español o en cualquier otro idioma bajo petición. Póngase en contacto con Laurie Powell at 828-322-9191 ext. 249 or WPCOG, PO Box 9026, Hickory, NC 28603 de alojamiento para esta solicitud.

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**Run one time only on Tuesday, July 19, 2016**

**Please provide an affidavit.**

**Non-legal block ad. Not in the classified section.**

**Run Fair Housing, HUD and EEO logos.**

If you need further information please contact Laurie Powell at (828) 322-9191 x 249

Please send bill to:

Catawba County  
County Administration  
PO Box 389  
Newton, NC 28645  
Attn: Avajeane Wickes

**Thank you.**

## CERTIFICATE OF COMPLETION

1. Grantee: Catawba County  
 3. Project Name: Commerce Fellows Training Program

2. Grant Number: 02-D-2681  
 4. Project Number: D-1

5. Final Statement of Costs				
Program Activity Categories (a)	To Be Completed by Recipient		Total Costs (Col. b + c) (d)	To Be Completed by DOC
	Paid Costs	Unpaid Costs		Approved Total Costs
	(b)	(c)		(e)
a. Acquisition	\$0.00		\$0.00	
b. Disposition	\$0.00		\$0.00	
c. Public facilities and improvements				
(1) Senior and handicapped centers	\$0.00		\$0.00	
(2) Parks, playgrounds and recreation facilities	\$0.00		\$0.00	
(3) Neighborhood facilities	\$0.00		\$0.00	
(4) Solid waste disposal facilities	\$0.00		\$0.00	
(5) Fire protection facilities and equipment	\$0.00		\$0.00	
(6) Parking facilities	\$0.00		\$0.00	
(7) Street improvements	\$0.00		\$0.00	
(8) Flood and drainage improvements	\$0.00		\$0.00	
(9) Pedestrian improvements	\$0.00		\$0.00	
(10) Other public facilities	\$0.00		\$0.00	
(11) Sewer improvements	\$0.00		\$0.00	
(12) Water improvements	\$0.00		\$0.00	
d. Clearance activities	\$0.00		\$0.00	
e. Public services	\$0.00		\$0.00	
f. Relocation assistance	\$0.00		\$0.00	
g. Construction, rehab. and preservation activities				
(1) Construction or rehab. of com. & indust. bldgs.	\$0.00		\$0.00	
(2) Rehabilitation of privately owned buildings	\$0.00		\$0.00	
(3) Rehabilitation of publicly owned buildings	\$0.00		\$0.00	
(4) Code enforcement	\$0.00		\$0.00	
(5) Historic preservation	\$0.00		\$0.00	
h. Development financing				
(1) Working capital	\$0.00		\$0.00	
(2) Machinery and equipment	\$0.00		\$0.00	
i. Removal of architectural barriers	\$0.00		\$0.00	
j. Other activities	\$24,976.01		\$24,976.01	
<b>k. Subtotal</b>	\$24,976.01		\$24,976.01	
l. Planning	\$0.00		\$0.00	
m. Administration	\$2,500.00		\$2,500.00	
<b>n. Total</b>	\$27,476.01		\$27,476.01	
o. Less: Program Income Applied to Program Costs	\$0.00		\$0.00	
<b>p. Equal: Grant Amount Applied to Program Costs</b>	\$27,476.01		\$27,476.01	

6. Computation of Grant Balance		
Description (a)	To Be Completed By Recipient	To Be Completed By DOC
	Amount	Approved Amount
	(b)	(c)
(1) Grant Amount Applied To Program Costs (From Line p)	\$27,476.01	
(2) Estimated Amount For Unsettled Third - Party Claims	\$ -	
(3) Subtotal	\$27,476.01	
(4) Grant Amount Per Grant Agreement	\$ 27,476.01	
(5) Unutilized Grant To Be Canceled (Line 4 Minus Line 3)		
(6) Grant Funds Received	\$ 25,217.48	
(7) Balance of Grant Payable (Line 3 Minus Line 6)*	\$2,258.53	

\* If Line 6 exceeds Line 3, enter the amount of the excess on Line 7 as a negative amount. This amount shall be repaid to DOC by check, unless DOC has previously approved use of these funds.



**7. Program Income**a) Amount of existing program income: \$0.00b) Amount of anticipated program income: \$0.00

c) If program income exists or is anticipated, describe the proposed application(s):

N/A

**8. Unpaid Costs and Unsettled Third Party Claims**

Are there any unpaid costs or unsettled third party claims against the recipient's grant? Type "yes" or "no."

No

If yes, in the box below describe the circumstances and amounts involved.

**9. Remarks (For DOC Use Only)**☐

Please note that all financial records, supporting documents and other records pertinent to the community development program must be retained for a minimum of five (5) years from the date of this letter.

☐

This grant is closed pending receipt and approval of your final audit by the Department of Commerce.

☐

Town

☐

City

☐

County

**10. Certification of Recipient**

It is hereby certified that all activities undertaken by the Recipient with funds provided under the grant agreement identified on page 1 hereof, have, to the best of my knowledge, been carried out in accordance with the grant agreement; that proper provisions have been made by the Recipient for the payment of all unpaid costs and unsettled third party claims identified on page 1 hereof; that the State of North Carolina is under no obligation to make any further payment to the Recipient under the grant agreement in excess of the amount identified on Line 7 hereof; and that every other statement and amount set forth in this instrument is, to the best of my knowledge, true and correct as of this date.

Date	Typed Name and Title of Recipient's Authorized Representative	Signature of Recipient's Authorized Representative
<u>August 1, 2016</u>	<u>C. Randall Isenhower</u> (Name) <u>Chair, County Commissioners</u> (Title)	√ _____

**11. DOC Approval**

This Certification of Completion is hereby approved. Therefore, I authorize cancellation of the unutilized contract commitment and related funds reservation and obligation of \$ \_\_\_\_\_, less \$ \_\_\_\_\_ previously authorized for cancellation (from Section 6, line 6, page 1).

Date	Typed Name and Title of DOC Authorized Representative	Signature of DOC's Authorized Representative
_____	<u>George Sherrill</u> Director	√ _____

## MEMO

**To:** Catawba County Board of Commissioners  
**From:** Scott Millar, President, and Julie Pruett, Director of Business Recruitment, Catawba County EDC  
**Date:** August 1, 2016  
**Subject:** Claremont Spec Building Settlement, Economic Development Agreement with DAE Systems and Applicable Resolution; and Creation of Spec Building Fund

### **Request:**

The Board of Commissioners to consider the following:

- I. Settlement of the December 2, 2013, Agreement by and between **Catawba County** ("County"), **City of Claremont** ("City"), **BG&A Properties, LLC** ("BG&A"), and **Catawba County Economic Development Corporation** ("EDC") facilitating the construction and related development of the **Claremont Speculative Building** ("Spec Building");
- II. Hold a public hearing to receive citizen comments and consider approval of an Economic Development Agreement with DAE Systems; and
- III. Additional consideration of creation of permanent **Spec Building Fund** with refunded amounts and money on account.

### **I. Claremont Spec Building**

#### **Background:**

Subsequent to a 12/2/2013 agreement, BG&A built a shelled-in speculative building and received a Temporary Certificate of Occupancy 10/2/2014, leading to at least 28 client visits and another nearby project announcement (Substance Inc., currently under construction in Claremont International Business Park). As a part of the agreement, each party agreed to undertake certain expenses and risks to facilitate these opportunities.

BG&A was to construct the facility, being responsible for providing the land, the facility, financing and other carrying costs (defined to include interest, insurance, and electricity), with the EDC Committee of 100 to provide the first \$10,000/year of these carrying costs for up to three years and the remainder of costs being split 50/50 by City/County (up to \$36,000 in carrying costs per entity for up to three years). The City and County also agreed to waive permitting fees, water and sewer connection fees, and agreed to provide grants equal to the amount of County/City taxes while the building was marketed (County for up to 36 months/City for up to 48 months).

The sale of the facility was conditioned on the requirement the building would be utilized by an end user creating jobs at or above the average county wage and to provide grants to defray the cost for an industrial access road. A certified appraisal of the site was performed, establishing a land value of \$295,000. The shell building contract price for the facility was \$1,442,000, and there was a requirement that Matthews Construction be allowed to submit a bid on any subsequent upfit/construction.

Per the contract, upon the sale of the building, proceeds of the sale are required to be distributed in this order:

- 1) Landowner (BG&A) would be paid in the amount of \$295,000.
- 2) Developer (BG&A) would be paid for building construction in the amount of \$1,442,000.

- 3) Any remaining proceeds would be distributed to City, County, and EDC to reimburse carrying costs pro rata to their participation, with any such proceeds earmarked by City/County for future shell building projects should such a program then exist.

**Settlement and Sale of the Facility:**

An offer to purchase the Spec Building was made, with an expected closing date on or before 10/1/2016, facilitating a 15-year lease to a company that will meet all of the conditional requirements for job creation and wages. NCDOT has agreed to construct the access road at no cost to the County/City.

At closing, EDC will receive the payment from the developer in the amount of \$1,800,000 and will distribute payments to Landowner in the amount of \$270,000 (note that negotiations were successful in reducing the original \$295,000 cost for the land), contractor in the amount of \$1,442,000, and will be reimbursing EDC payments carrying costs made to date. In addition to satisfying these obligations, EDC will then be making these Spec Building Cost Reimbursements:

	County	City	EDC/EDC C100
<b>Budgeted</b>			
FY2014-2015	\$ 36,000.00	\$ 36,000.00	\$ 10,000.00
FY2015-2016	\$ 36,000.00	\$ 36,000.00	\$ 10,000.00
FY2016-2017	<u>\$ 36,000.00</u>	<u>\$ 36,000.00</u>	<u>\$ 10,000.00</u>
Total	\$ 108,000.00	\$ 108,000.00	\$ 30,000.00
<b>EDC payments reimbursed to date:</b>			
a.) Carrying Costs:	\$ 36,000.00	\$ 36,000.00	
b.) Yr. 1 Property Taxes on unoccupied Shell Facility	<u>\$ 361.90</u>	<u>\$ 172.96</u>	
	\$ 36,361.90	\$ 36,172.96	
<b>Yr. 2 &amp; 3 Property Taxes on unoccupied Shell (paid by EDC but not yet reimbursed by City/County)</b>	2015 \$ 5,491.83 2016 \$ 4,137.68 Total \$ 9,629.51	2015 \$ 4,679.99 2016 \$ 3,526.02 Total \$ 8,206.01	
<b>EDC Committee of 100 Grant</b>			\$ 20,000.00
<b>Spec Building Cost Reimbursement at Closing</b>	<b>\$ 26,732.39</b>	<b>\$ 27,966.95</b>	<b>\$ 3,164.00</b>

**Recommendation**

The Commissioners approve the settlement of the December 2, 2013, Spec Building Agreement under the terms and the amounts discussed above.



## **II. DAE Systems Economic Development Agreement and Resolution**

Subject to the settlement of the Claremont Spec Building project and the recovery of all City/County Carrying Costs, EDC presents the attached Economic Development Agreement & Resolution for consideration and approval and authorize the Chair to execute these along with any other needed documents.

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

DAE Systems, a California aviation supplier, intends to relocate and further up-fit and equip the 52,000 sf Claremont Spec Building, commits to hire and maintain 53 jobs at a minimum average salary of \$51,618 (current County average \$38,238), and to cause or make a minimum expenditure of \$7,255,000 during the investment period. Agracel LLC will be buying the facility and leasing it to DAE Systems for a minimum period of 15 years. The State of North Carolina will be considering additional incentives from the One NC fund and NCDOT has agreed to fund BGA Drive under separate contractual agreements.

DAE Systems considered multiple states and multiple sites within North Carolina for the project.

Dynamic-Air Engineering, Inc. is a designer and manufacturer of military and FAA qualified, scalable air moving systems for the aerospace industry. Dynamic-Air Engineering, Inc. was founded in Los Angeles, CA in 1942 with what is believed to be the first fan-forced airborne convection heater for the Army Air Corps.

In 1964, the company headquarters moved from Los Angeles to where it remains today in Orange County, CA. Over the subsequent years, Dynamic-Air Engineering became DAE Systems by adding several divisions with specialized products and services. In 2010, DAE Protection began operations, providing small arms, armament subsystems, non-lethal defense technologies and services to the military and law enforcement sectors both domestically and internationally.

For over 70 years DAE Systems has served and helped to define the defense, aerospace, and commercial industries around the globe while preserving its Dynamic-Air Engineering flagship brand and family origin. DAE Systems has remained in the family, which has fostered a culture where customers and employees are treated as honored members of the extended family.

### **Economic Development Agreement Overview and Clawbacks**

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

Like all incentives provided by the County, these incentives will be based on an economic development agreement which requires DAE Systems to meet minimum thresholds of investment and job creation by

2022 which must be maintained for a minimum of three years following the payment of the final incentive. Clawbacks are included in the agreement requiring repayment should the investment and job creation amounts not be met or sustained.

#### **Recommendation**

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

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### **III. Consideration of creation of a Spec Building Account**

#### **Background**

Paragraph 11.c. of the initial Spec Building agreement indicated the possibility of creating a recurring source of funding for speculative buildings in the event of a successful conclusion. "It is understood that any such proceeds will be earmarked by Catawba and Claremont for future shell building projects should such a program then exist." As a result of the successful sale of the Claremont Spec building, the development of Substance Incorporated on an adjacent site, and current project activity and multiple clients seriously interest in the Claremont Spec building, the EDC strongly recommends the creation of a Spec Building Account utilizing the Spec Building Cost reimbursements listed in the chart above (County \$26,732.39) and the budgeted amounts on account for FY2015-2016 (\$36,000) and FY2016-2017 (\$36,000), totaling \$98,732.39, to fund a permanent Spec Building account. It should be recognized that future sites are not likely to have been pre-graded like the initial BGA site and future spec building sites will have a more difficult time being cost-competitive without having the cost advantage of a graded site.

#### **Recommendation**

The County revert the Spec Building Cost reimbursement settlement and the budgeted Spec Building line item values from FY2015-2017 into the EDC Spec Building account, with guidelines to be developed for appropriate approval by Commissioners of any future expenditures. Innovate Catawba recommended two or more spec buildings in the County, possibly one in the US321 corridor and another in the I-40/US70 corridor, and the next location recommendation may include funding/participation from Claremont and other municipalities, depending on site determination.

Resolution No. 2016-

Resolution Authorizing Economic Development Incentives for DAE Systems

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

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

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

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

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C. Randall Isenhower, Chair  
Catawba County Board of Commissioners

# Claremont Spec Building Agreement and Settlement



- 2013 Agreement – Matthews Construction/BG&A, County, Claremont, EDC
  - 51,200sf building on graded site with utilities, owned by BG&A
  - County, City and EDC Committee of 100 pay carrying costs up to 3 years
  - EDC Committee of 100 pays first \$10,000/yr; City and County splits remaining costs 50/50 up to \$36,000 each per year, \$108,000 total/entity
  - City and County waive permitting fees and property taxes (County 36 mos./City 48 mos.)
- Sale of facility to Agracel (lessor), reimbursing all County payments except property taxes on vacant shell (\$9,629.51)



DAE Systems was founded in 1942 and is a third generation family owned manufacturer of military and FAA-qualified equipment for the commercial aerospace and defense markets. Their product ranges from highly engineered air moving and motion control products to specialized sub-assemblies, fabricated and machined structures for aviation and defense companies worldwide.

Company and Products

- Relocate company HQ, R&D and production from California
- 51,200 sf spec building expandable to 128,000 sf in the Claremont International Business Park - min. 15 year lease
- Invest \$7,255,000 in building up-fit and machinery & equipment over 5 years
- Create 53 jobs paying an overall average wage of \$51,618 (county average \$38,238)
- Competitive project that looked at several states and several counties even within NC



- Performance Based Incentive: Based on an economic development agreement with clawbacks should DAE Systems fail to meet minimum contractual thresholds
- Agrees to adhere to requirements of Education Matters and minimum creation of 53 jobs with an overall average wage of \$51,618 and \$7,255,000 investment
- Amount equal to a percentage of new property taxes generated for 5 years w/the following percentages and maximum amounts:

– Year 1	75%	\$ 27,514	Amounts prior to depreciation.
– Year 2	75%	\$ 27,514	
– Year 3	67%	\$ 24,579	
– Year 4	67%	\$ 27,950	
– Year 5	50%	<u>\$ 20,858</u>	
Total maximum		\$128,415	

- Initial spec building agreement discussed the possibility of creating a recurring source of funding for speculative buildings.
- Resulted in two very nice projects and significant traffic to the County.
- EDC strongly recommends the creation and recurring funding of a Spec Building Account using spec building cost reimbursements and budgeted amounts currently on account, now totaling \$98,732.39.
- Future sites are not likely to have been pre-graded like the BG&A site, challenging the competitiveness of the next facility without this funding.

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

**STATE OF NORTH CAROLINA  
COUNTY OF CATAWBA**

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

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

**WITNESSETH:**

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

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

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

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

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

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

## **SECTION I – DAE SYSTEMS**

1. On or before August 31, 2016 DAE Systems shall:
  - 1.1 Deliver to County a certificate confirming that DAE Systems has, or has caused to be acquired or leased, the real Property and the construction and installation of the Improvements will result in the creation, maintenance and availability of a minimum of 53 new jobs prior to December 31, 2022 and that the overall average weekly wage will equal or exceed \$51,618.00 for each year that County pays DAE Systems the economic development incentive provided for herein. DAE Systems affirms understanding of, and agrees to comply with, the Calendar of Responsibilities as outlined in Exhibit "A". Such certificate shall be substantially in the form of the certificate attached to this Agreement as Exhibit "A".
  - 1.2 Provide an Opinion of Counsel for DAE Systems, in form and substance reasonably satisfactory to County, that this Agreement has been duly authorized, executed and delivered by DAE Systems; and
  - 1.3 Provide an Opinion of Counsel for DAE Systems, in form and substance reasonably satisfactory to County, stating that this Agreement is binding upon and enforceable against DAE Systems, in North Carolina, in accordance with its terms.
2. In order to induce County to enter into this Agreement and to appropriate and expend monies for payment of economic development incentives, DAE Systems represents and warrants that, as of the execution date hereof:
  - 2.1 DAE Systems is qualified to do business in the State of North Carolina, has a place of business within the State of North Carolina, and is in good standing and authorized to do business in the State of North Carolina;
  - 2.2 DAE Systems has the corporate power and authority to own its properties and assets and to carry on its business as now being conducted and has the corporate power and authority to execute and perform this Agreement;
  - 2.3 The undersigned representative of DAE Systems has the right, authority and duty to execute this Agreement in the name and on behalf of DAE Systems;
  - 2.4 This Agreement (i) is the valid and binding instrument and agreement of DAE Systems, enforceable against DAE Systems in accordance with its terms; (ii) does not violate any order of any court or other agency of government binding on DAE Systems, the charter documents or operating agreement of DAE Systems or any provision of any indenture, agreement or other instrument to which DAE Systems is a party; and (iii) does not conflict with, result in a breach of, or constitute an event of default, or an event which, with notice or lapse of time, or both, would constitute an event of default, under any indenture, agreement or other instrument to which DAE Systems is a party;

- 2.5 There is no suit, claim, action or litigation pending, or to the knowledge of DAE Systems threatened, relating to the Improvements, the use of the Improvements for their intended purpose, or any other matter contained herein;
  - 2.6 There is no impediment to the use of the Property for the purposes contemplated by this Agreement.
  - 2.7 DAE Systems is not engaged in a business that would be exempt from property taxes.
3. In order to induce DAE Systems to enter into this Agreement and to appropriate and expend monies for payment of economic development incentives, County represents and warrants that, to the best of County's knowledge that, as of the execution date hereof:
- 3.1 County is a North Carolina body politic corporate in nature and existing under North Carolina law;
  - 3.2 County has the power and authority to carry on its business as now being conducted and has the power and authority to execute and perform this Agreement;
  - 3.3 The undersigned authorized representative of County has the right, authority and duty to execute this Agreement in the name and on behalf of County;
  - 3.4 This Agreement (i) is the valid and binding instrument and agreement of County, enforceable against County in accordance with its terms; (ii) does not violate any order of any court or other agency of government binding on County, the charter documents of County or any provision of any indenture, agreement or other instrument to which County is a party; and (iii) does not conflict with, result in a breach of, or constitute an event of default, or an event which, with notice or lapse of time, or both, would constitute an event of default, under any indenture, agreement or other instrument to which County is a party; and
  - 3.5 There is no suit, claim, action or litigation pending, or to the knowledge of County threatened, relating to the Improvements, the use of the Improvements for their intended purpose, or any other matter contained herein.
4. DAE Systems shall make or cause to be made investments to the Property and Improvements during the Improvement Period. Cumulative expenditures shall be, which are inclusive of all past, present and/or future Landlord costs for the Property, including but not limited to: all acquisition costs for the land of the Property, all construction costs for the Property, all architectural, engineering, and/or consulting fees for the Property, all costs for the improvements to the Property specific to DAE Systems occupancy of the Property, and capital equipment and trade fixtures used to assemble, manufacture, and process business-related goods and services ("TI Costs"), will meet or exceed Seven Million Two Hundred Fifty Five Thousand Dollars (\$7,255,000) by December 31, 2022, all of which will qualify and result in additional value for ad valorem tax purposes as determined by the Catawba County Tax Office, and DAE Systems further agrees to

maintain in place, in good condition (ordinary wear and tear excepted), said Improvements for three years after the final incentive payment.

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

## **SECTION II – COUNTY**

6. On or before August 31, 2016 County shall deliver to DAE Systems an Opinion of Counsel for County, in form and substance reasonably satisfactory to DAE Systems, that this Agreement has been duly authorized, executed and delivered by County; and stating that this Agreement complies with the terms and requirements of NCGS 158-7.1 and is binding upon and enforceable against County with its terms; and evidence in the form of a Resolution or Resolutions, or official minutes, which County duly adopted authorizing the economic development incentives set forth in this Agreement.
7. Payment of economic development incentives for Real and Personal Investments and for Job Creation in accordance with this Agreement shall be made as follows:
  - a. County will provide annual payments equal to 75% of the ad valorem taxes associated with the additional value (exclusive of rolling stock) as paid to County for a two year period, commencing with the taxes payable for the tax values on January 1, 2018, and January 1 of the succeeding year for investments made pursuant to paragraph 4 with maximum payments as reflected in paragraph 7.b. and in the chart below. Further, the County will provide annual payments equal to 67% of the ad valorem taxes associated with the additional value (exclusive of rolling stock), commencing with the taxes payable for the tax values on January 1, 2020, and January 1 of the succeeding year for investments made pursuant to paragraph 4 with maximum payments as reflected in paragraph 7.b. and in the chart below. Further, the County will provide an annual payment equal to 50% of the ad valorem taxes associated with the additional value (exclusive of rolling stock), commencing with the taxes payable for the tax values on January 1, 2021, for investments made pursuant to paragraph 4 above with maximum payments as reflected in paragraph and in the chart below.
  - b. In no event will the cumulative payments by County exceed One Hundred Twenty Eight Thousand Four Hundred Fifteen Dollars (\$128,415) for the five years.



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

- c. Said amounts shall be payable annually, beginning in 2019 (Grant Year 1) and payable through 2023.
- d. Upon payment of ad valorem taxes by Company to County for each of years 2018 through 2022 and certification by Company in the form or substantially in the form of the certificate attached hereto as Exhibit B, of Improvements made and proof of payment of taxes and verification that Company has created and maintained jobs as agreed herein, County will, within sixty (60) days, pay to Company an economic development incentive payment, the amount of which is calculated by multiplying by the appropriate grant percentage numeric value times the total ad valorem tax revenue received by County attributable to the value of the Improvements made by Company pursuant to this Agreement in excess of the assessed tax value on the site as of January 1, 2016.
- e. Company shall furnish to County on or before March 5th of each calendar year, following and corresponding to the previous July 1st when taxes are billed, the certification required by this Section 7 and proof of payment of all applicable taxes. If requested, Company shall provide County, at County's expense, independent certification as to such expenditures and number of existing jobs.

### **SECTION III - OTHER**

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

foregoing, should the DAE Systems be unable to meet the requirements as described above as a result of a force majeure, the obligation of the County to pay as provided in Section II above, shall be suspended until such time as the DAE Systems is relieved from the effect of an event of force majeure and resumes completion of the Improvements.

9. It shall be an Event of Default if any one or more of the following events shall occur for any reason whatsoever (and whether such occurrence shall be voluntary or involuntary or come about or be effected by operation of law or pursuant to or in compliance with any judgment, decree or order of any court or any order, rule or regulation of any administrative or governmental body):
- a. If DAE Systems, except in the event of force majeure, shall commit a material breach of a material obligation hereunder (including without limitation, the obligation to meet the investment goals and maintaining a minimum of 90% of the proposed (53) newly created jobs as set forth herein) and such breach shall continue for a period of sixty (60) or more days following receipt of written notice from County;
  - b. If DAE Systems shall fail to qualify and/or maintain the requirements for eligibility and participation in agreements for State of North Carolina incentives applied for and awarded;
  - c. If DAE Systems fails to timely file Exhibit A, or Exhibit B on or before March 5 of each year, following and corresponding to the previous July 1st when taxes are billed, and any qualifying incentive would be due to DAE Systems, this shall be deemed a breach of the Agreement and notwithstanding paragraph 10 below, the sole remedy will be that County will not owe DAE Systems any incentive that may have otherwise been due had those filings properly been made when due.
  - d. If any material representation, warranty or other statement of fact contained in this Agreement or in any final writing, certificate, report or statement furnished by DAE Systems to County in connection with the transaction described in this Agreement, shall, to DAE Systems' knowledge, to be false or misleading in any material respect at the time given;
  - e. If DAE Systems shall be unable to pay its debts generally as they become due; files a petition to take advantage of any insolvency statute; makes an assignment for the benefit of creditors; commences a proceeding for the appointment of a receiver, trustee, liquidator or conservator of themselves or of the whole or any substantial part of their property; files a petition or answer seeking reorganization or arrangement of similar relief under the federal bankruptcy laws or any other applicable law or statute of the United States of America or any state;
  - f. If County, except in the event of force majeure, fails to pay DAE Systems when such payment is due or is otherwise unable to pay its debts generally as they become due; files a petition to take advantage of any insolvency statute; makes an assignment for the benefit of creditors; commences a

proceeding for the appointment of an emergency manager, receiver, trustee, liquidator or conservator or any similar entity; files a petition or answer seeking reorganization or arrangement of similar relief under the federal bankruptcy laws or any other applicable law or statute of the United States of America or North Carolina;

- g. If a Court of competent jurisdiction shall enter an order, judgment, or decree appointing a custodian, receiver, trustee, liquidator, or conservator of DAE Systems or of the whole or any substantial part of their properties, or approves a petition filed against DAE Systems seeking reorganization or arrangement of similar relief under the federal bankruptcy laws or any other applicable law or statute; or if, under the provisions of any other law for the relief or aid of debtors, a court of competent jurisdiction shall assume custody or control of DAE Systems or of the whole or any substantial part of their properties;
  - h. If a Court of competent jurisdiction shall enter an order, judgment, or decree appointing an emergency manager, custodian, receiver, trustee, liquidator, or conservator or any similar entity for County, or approves a petition filed against County seeking reorganization or arrangement of similar relief under the federal bankruptcy laws or any other applicable law or statute; or if, under the provisions of any other law for the relief or aid of debtors, a court of competent jurisdiction shall assume custody or control of County; or
  - i. If DAE Systems shall allow its taxable assets, employment and average wage amounts to fall below the minimum values agreed upon in this Agreement, as each of the same pertain to the facility contemplated by this Agreement.
- 10. County Remedy: If DAE Systems fails to cure an Event of Default for which it receives written notice from County, the obligation of County as set out herein shall terminate, and DAE Systems shall immediately refund to County all economic development incentive payments paid to DAE Systems prior to the date of the Event of Default plus interest at the rate of prime plus one percent (1%). The date the prime interest rate shall be determined shall be the date the DAE Systems receives the notice of the Event of Default and prime will be the prime rate as published in the *Wall Street Journal (WSJ)*. DAE Systems shall, as it relates to an Event of Default, have sixty (60) days after receipt of the notice required above, to cure the Event of Default.
- 11. DAE Systems Remedy: If County fails to cure an Event of Default for which it receives written notice from DAE Systems, the obligations of DAE Systems as set out herein shall terminate. County shall, as it relates to an Event of Default, have sixty (60) days after receipt of the notice required above, to cure the Event of Default.
- 12. DAE Systems and County acknowledge that any monies appropriated and expended by County for economic development incentives, as provided in this Agreement, are for a bona fide public purpose and are expended in good faith reliance on NCGS 158-7.1. In the event a Court of competent jurisdiction rules to which either DAE Systems or County is a party, that all monies expended by County pursuant to this Agreement were not offered and accepted in good faith and in compliance with NCGS 158-7.1 and, further, that such monies must be repaid, DAE Systems will make such repayment to County. In

the event one or more lawsuits are brought against County or any County elected official, officer, agent or employee, or DAE Systems, challenging the legality of this Agreement, then County and DAE Systems shall exercise their best efforts to defend against any and all such lawsuits, at their own cost and expense. In any event, if DAE Systems is required to repay funds to County pursuant to this paragraph 12, the benefit of this Agreement to DAE Systems will have been lost and all further obligations of DAE Systems hereunder shall terminate.

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

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

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

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

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

14. This Agreement shall inure to the benefit of, and is binding upon, County and DAE Systems and their respective successors and assigns. However, neither this Agreement, nor any rights, privileges, nor claims created by this Agreement may be transferred by DAE Systems without the prior, written approval of County, which approval will not be unreasonably withheld.
15. Except as otherwise provided in this Agreement, this Agreement may not be amended, changed, modified or altered except by written agreement of the parties.
16. If any provision of this Agreement is held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provisions of this Agreement.
17. This Agreement may be executed in any number of counterparts, each of which when so executed and delivered shall be deemed an original, and it shall not be necessary in

making proof of this Agreement to produce or account for more than one such fully-executed counterpart.

18. Controlling Law and Venue. This Agreement is governed by and shall be construed in accordance with the laws of the State of North Carolina; venue of any action shall be in the general courts of justice in Catawba County, or if in Federal court in the Western District of North Carolina.
19. The term of this Agreement shall commence on the date of execution and expire upon payment by County of all payments due to DAE Systems and DAE Systems fulfilling all of its requirements including real and personal property investments and the creation and maintenance of jobs, unless earlier terminated as provided herein.
20. Both DAE Systems and County acknowledge and stipulate that this Agreement is the product of mutual negotiation and bargaining and that it has been drafted by Counsel for both DAE Systems and County.

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

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

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

By: \_\_\_\_\_ **(Seal)**  
C. Randall Isenhower, Chair  
Catawba County Board of Commissioners

\_\_\_\_\_  
Barbara E. Morris, Clerk

**DAE SYSTEMS**

By: \_\_\_\_\_ **(Seal)**  
Jeremy I. Morrison, 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 \_\_\_\_\_, 2016.

[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 Jeremy I. Morrison, President, personally appeared before me this day and acknowledged on behalf of DAE SYSTEMS the voluntary due execution of the foregoing document, all for the purposes therein expressed.

Witness my hand and seal this \_\_\_\_\_ day of \_\_\_\_\_, 2016.

[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.

\_\_\_\_\_ Robert Miracle, Catawba County 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 DAE Systems

**CERTIFICATE**

**TO:           Catawba County**

This Certificate is delivered pursuant to paragraph 1.1 and paragraph 9 of the Joint Economic Development Agreement (the "Agreement"), dated \_\_\_\_\_, 2016, between Catawba County ("County") and DAE SYSTEMS ("DAE Systems"). 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 DAE Systems, that:

- (a) DAE Systems acquired or has caused to be acquired the real property necessary for the construction of the Facility and the Improvements; and
- (b) DAE Systems will create, maintain and make available a minimum of 53 new jobs prior to December 31, 2022 and the overall average weekly wage will equal or exceed \$51,618 for each year that County pays DAE Systems the economic development incentive provided for herein; and
- (c) DAE Systems agrees to comply with the Calendar of Responsibilities listed below.

**Calendar of Responsibilities:**

By January 5: DAE Systems 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: DAE Systems must provide Exhibit A and Exhibit B, supporting documents and proof of payment and/or compliance as required within Agreement.

By April 15: DAE Systems 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: This is not a company responsibility.

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

**DAE Systems**

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

Jeremy I. Morrison, President

**EXHIBIT B**  
Joint Economic Development Agreement  
Between County of Catawba and DAE Systems

**CERTIFICATE**

**TO:           Catawba County**

This Certificate is delivered pursuant to Section 7 and Section 9 of the Joint Economic Development Agreement ("the "Agreement") dated \_\_\_\_\_, 2016, between Catawba County ("County") and DAE SYSTEMS ("DAE Systems"). Any capitalized term not otherwise defined herein shall have the meaning assigned to such term in the Agreement.

DAE Systems 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 \_\_\_\_\_ Claremont 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\_\_.

**DAE Systems**

\_\_\_\_\_  
Jeremy I. Morrison, President

**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: DAE Systems 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: DAE Systems must provide Exhibit A and Exhibit B, supporting documents and proof of payment and/or compliance as required within Agreement.
- By April 15: DAE Systems 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: This is not a company responsibility.

## **APPOINTMENT RECOMMENDATIONS FOR AUGUST 1, 2016 MEETING**

**RANDY ISENHOWER NCACC Annual Conference Voting Delegate**

Chair Isenhower recommends the appointment of Vice-Chair Barbara Beatty as the voting delegate at the NCACC Annual Conference in Forsyth County August 11-14.

**BARBARA BEATTY Nursing and Rest Home Advisory Board**

Vice-Chair Beatty recommends the appointment of Richard Browder for an initial one year term on the Nursing and Rest Home Advisory Board. This term will expire July 31, 2017.

## **MEMORANDUM**

**TO:** Catawba County Board of Commissioners

**FROM:** Jacky Eubanks, Director Of Planning and Parks

**DATE:** August 1, 2016

**RE:** 2016 Limited English Proficiency Plan (LEP)

### **REQUEST**

Staff requests the Board of Commissioners adopt the 2016 Limited English Proficiency Plan (LEP).

### **BACKGROUND**

Catawba County receives funding for various grants from the Department of Commerce and one of the requirements to ensure compliance with Title VI of the Civil Rights Act of 1964 is to have an adopted Limited English Proficiency Plan (LEP). The LEP certifies that every grantee will not discriminate on the basis of national origin. This includes providing meaningful access to programs for those with limited English proficiency. The County's current LEP was adopted June 27, 2013, as part of the 2012 Scattered Sites Housing Project and expired June 30, 2016. The Western Piedmont Council of Government suggested adopting the 2016 LEP extending coverage to 2021 in case the County has the opportunity to apply for future Department of Commerce grants such as Economic Development. The updated LEP will expire in 2021. No changes have occurred to the Plan in comparison to the one previously adopted.

### **RECOMMENDATION**

Staff recommends the Board of Commissioners adopt the the 2016 Limited English Proficiency Plan (LEP).

## **Providing Meaningful Communication with Persons with Limited English Proficiency**

*(Catawba County)  
(2016-2021)*

*The purpose of this Policy and Plan is to ensure compliance with Title VI of the Civil Rights Act of 1964, and other applicable federal and state laws and their implementing regulations with respect to persons with limited English proficiency (LEP). Title VI of the Civil Rights Act of 1964 prohibits discrimination based on the ground of race, color or national origin by any entity receiving federal financial assistance. Administrative methods or procedures, which have the effect of subjecting individuals to discrimination or defeating the objectives of these regulations, are prohibited.*

### **POLICY:**

In order to avoid discrimination on the grounds of national origin, all programs or activities administered by the **Catawba County** will take reasonable steps to ensure that persons with Limited English Proficiency (LEP) have meaningful access and an equal opportunity to participate in benefits and services for which such persons qualify. This Policy defines the responsibilities the agency has to ensure LEP individuals can communicate effectively.

### **DEFINITIONS:**

**Limited English Proficient (LEP) individual** – Any prospective, potential, or actual recipient of benefits or services from the agency who cannot speak, read, write or understand the English language at a level that permits them to interact effectively with health care providers and social service agencies.

**Vital Documents** – These forms include, but are not limited to, applications, consent forms, all compliance plans, bid documents, fair housing information, citizen participation plans, letters containing important information regarding participation in a program; notices pertaining to the reduction, denial, or termination of services or benefits, the right to appeal such actions, or that require a response from beneficiary notices advising LEP persons of the availability of free language assistance, and other outreach materials.

**Title VI Compliance Officer:** The person or persons responsible for administering compliance with the Title VI LEP policies.

**Substantial number of LEP:** 5% or 1,000 people, whichever is smaller, are potential applicants or recipients of the agency and speak a primary language other than English and have limited English proficiency.

### **PROCEDURES:**

#### **1. IDENTIFYING LEP PERSONS AND THEIR LANGUAGE**

The **Catawba County** will promptly identify the language and communication needs of the LEP person. Staff will use a language identification card (or “I speak cards,” provided by Community Investment and Assistance (CI)) and LEP posters to determine the language. In addition, when records are kept of past

interactions with individuals or family members, the language used to communicate with the LEP person will be included as part of the record.

## 2. OBTAINING A QUALIFIED INTEPRETER

List the current name, office telephone number, office address and email address of the Title VI compliance officers:

Jacky Eubanks, Director of Planning And Development  
Catawba County- Mailing address PO Box 389, Newton, NC 28658, Physical address 101 A South West Blvd, Newton, NC 28658  
828-465-8380  
jeubanks@catawbacountync.gov

### Check all methods that will be used:

☐ Maintaining an accurate and current list showing the language, phone number and hours of availability of bilingual staff (*provide the list*): See attached list

☒ Contacting the appropriate bilingual staff member to interpret, in the event that an interpreter is needed, if an employee who speaks the needed language is available and is qualified to interpret;

☐ Obtaining an outside interpreter if a bilingual staff or staff interpreter is not available or does not speak the needed language.

Have/has agreed to provide qualified interpreter services. The agency's (or agencies') telephone number(s) is/are (*insert number (s)*), and the hours of availability are (*insert hours*).

See attached

☐ Other (*describe*):

**All staff will be provided notice of this policy and procedure, and staff that may have direct contact with LEP individuals will be trained in effective communication techniques, including the effective use of an interpreter.**

Some LEP persons may prefer or request to use a family member or friend as an interpreter. However, family members or friends of the LEP person will not be used as interpreters unless specifically requested by that individual and **after** the LEP person has understood that an offer of an interpreter at no charge to the person has been made by the facility. Such an offer and the response will be documented in the person's file. If the LEP person chooses to use a family member or friend as an interpreter, issues of competency of interpretation, confidentiality, privacy, and conflict of interest should be considered. If the family member or friend is not competent or appropriate for any of these reasons, competent interpreter services will be provided to the LEP person.

Children and other residents will **not** be used to interpret, in order to ensure confidentiality of information and accurate communication.



### **3. PROVIDING WRITTEN TRANSLATIONS**

- i. The **Catawba County** will set benchmarks for translation of vital documents into additional languages.
- ii. When translation of vital documents is needed, the **Catawba County** will submit documents for translation into frequently-encountered languages.
- iii. Facilities will provide translation of other written materials, if needed, as well as written notice of the availability of translation, free of charge, for LEP individuals.

### **4. PROVIDING NOTICE TO LEP PERSONS**

The **Catawba County** will inform LEP persons of the availability of language assistance, free of charge, by providing written notice in languages LEP persons will understand. Example: The notification will include, in the primary language of the applicant/recipient, the following language: **IMPORTANT: IF YOU NEED HELP IN READING THIS, ASK THE AGENCY FOR AN INTERPRETER TO HELP. AN INTERPRETER IS AVAILABLE FREE OF CHARGE.**

All interpreters, translators and other aids needed to comply with this policy shall be provided without cost to the person being served, and individuals and their families will be informed of the availability of such assistance free of charge.

At a minimum, notices and signs will be posted and provided in intake areas and other points of entry, including but not limited to the main lobbies, waiting rooms, etc.

**In the lobby of all main buildings.**

Notification will also be provided through one or more of the following: outreach documents, telephone voice mail menus, local newspapers, radio and television stations, and/or community-based organizations

**Outreach document, telephone voice main menus, local newspapers, radio and television.**

### **5. MONITORING LANGUAGE NEEDS AND IMPLEMENTATION**

On an ongoing basis, The **Catawba County** will assess changes in demographics, types of services or other needs that may require reevaluation of this policy and its procedures. In addition, The **Catawba County** will regularly assess the efficacy of these procedures, including but not limited to mechanisms for securing interpreter services, complaints filed by LEP persons, feedback from residents and community organizations, etc.

#### **I. Compliance Procedures, Reporting and Monitoring**

##### **A. Reporting**

The agency will complete an annual compliance report and send this report to CI. (Format will be supplied by CI)

##### **B. Monitoring**

The agency will complete a self-monitoring report on a quarterly basis, using a standardized reporting system proposed by the local government. These reports will be maintained and stored by the Title VI Compliance Officer and will be provided to the CI upon request.

The agency will cooperate, when requested, with special review by the CI.

## **II. Applicant/Recipient Complaints of Discriminatory Treatment**

### **A. Complaints**

The agency will provide assistance to LEP individuals who do not speak or write in English if they indicate that they would like to file a complaint. A complaint will be filed in writing, contain the name and address of the person filing it or his/her designee and briefly describe the alleged violation of this policy. The form can be found at <http://www.nccommerce.com/cd/community-investment/forms-resources/compliance-plans-and-templates>.

The agency will maintain records of any complaints filed, the date of filing, actions taken and resolution.

The agency will notify the appropriate section within CI of complaints filed, the date of filing, actions taken and resolution. This information will be provided within 30 days of resolution.

### **B. Resolution of Matter**

If the matter cannot be resolved by informal means, the individual will be informed of his or her right to appeal further to CI. This notice will be provided in the primary language of the individual with Limited English Proficiency.

The CI Compliance Office will conduct an investigation of the allegations of the complaint. The investigation will afford all interested persons and their representatives, if any, an opportunity to submit evidence relevant to the complaint.

The investigation will not exceed 30 days, absent a 15-day extension for extenuating circumstances.

If the investigation indicates a failure to comply with the Act, the local unit of government, agency Director or his/her designee will so inform the recipient and the matter will be resolved by informal means whenever possible within 60 days.

If the matter cannot be resolved by informal means, then the individual will be informed of his or her right to appeal further to the Department of Justice. This notice will be provided in the primary language of the individual with Limited English Proficiency.

If not resolved by CI, then complaint will be forwarded to Department of Justice (DOJ), Department of Housing and Urban Development (HUD) Field Office.

SUBMITTED AND ADOPTED BY:

C.Randall Isenhower  
Chair

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Signature

August 1, 2016  
Date

## MEMORANDUM

TO: Catawba County Board of Commissioners

FROM: Debbie Anderson, Purchasing Manager  
Barry Edwards, Utilities & Engineering Director

RE: Sole Source Exemption – Deployer 800 Alternate Daily Cover Machine

DATE: August 1, 2016

### Requested

Staff requests the authorization of the sole source exemption for the purchase of a used Deployer 800 Alternate Daily Cover Machine from EPI Environmental Products Inc. in the amount of \$289,000.

### Background

The Deployer 800 will be used to cover Municipal Solid Waste (MSW) Landfill working face with a biodegradable film. By State regulations, the working face must be covered daily using either dirt or some type of tarping material. The biodegradable material has been State-approved and will reduce soil usage, which saves airspace and thereby extends the useful life of the Landfill.

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

The Deployer 800 is only sold by EPI Environmental Products, Inc. and is the only machine of its type that is self-propelled. It also has a unique bio degradable cover material that is deployed from the rear of the machine. The Deployer 800 has a minimum life expectancy of ten years.

General Statute 143-129 allows an exemption from bidding for purchase contracts when performance or price competition for a product are not available, when a needed product is available from only one source of supply or when standardization or compatibility is the overriding consideration. This exemption requires governing body approval and a record must be maintained of purchases made under this exemption.

### Recommendation

Staff recommends the Board of Commissioners authorize the sole source exemption to purchase a used Deployer 800 Alternate Daily Cover Machine in the amount of \$289,000. This purchase is budgeted in the Solid Waste Management Fund 525 350200 985000.

## MEMORANDUM

TO: CATAWBA COUNTY BOARD OF COMMISSIONERS

FROM: Lori Mathes, Tax Collector

DATE: August 1, 2016

IN RE: REFUND REQUEST FOR AUGUST 1, 2016 MEETING

### REQUEST

One refund request totaling \$120.02 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. This taxpayer was billed incorrectly for their untagged 2002 Pontiac Grand Am in 2015. The property was assessed incorrectly at \$21,000 instead of \$2,100. This resulted in a refund due to the taxpayer in the amount of \$120.02.

### RECOMMENDATION

The refund request is approved as shown below:

Donald Steven Rowe  
Donna Rowe  
1472 Givens St  
Hickory, NC 28602-5527

	Abstract Number	YEAR	VALUE	COUNTY RATE	COUNTY TAX	MT. VIEW FIRE RATE	MT. VIEW FIRE TAX	TOTAL TAX
Original Billed Amount	2294437	2015	21,000	.5750	120.75	.06	12.60	133.35
Corrected Bill Amount		2015	2,100	.5750	12.07	.06	1.26	13.33
Refund Amount Due		2015	18,900	.5750	108.68	.06	11.34	120.02

## MEMORANDUM

**TO:** Catawba County Board of Commissioners

**FROM:** Jacky Eubanks, Director Of Planning and Parks

**DATE:** August 1, 2016

**IN RE:** North Carolina Housing Finance Agency 2016 Urgent Repair Program

### REQUEST

Staff requests the Board of Commissioners approve the following items associated with the Catawba County 2016 Urgent Repair Program Grant:

1. Agreement between the Western Piedmont Council of Governments (WPCOG) and Catawba County for the provision of Grant Management Assistance – Urgent Repair Housing Program – August 1, 2016 – January 31, 2018;
2. Project budget ordinance in the amount of \$100,000 for rehabilitation and administration; and
3. The 2016 NCHFA Urgent Repair Grant Assistance Policy and Procurement/Disbursement Policy for Catawba County's Urgent Repair Program.

### BACKGROUND

The North Carolina Housing Finance Agency awarded Catawba County the 2016 Urgent Repair Program Grant in the amount of \$100,000 in April 2016. The Program will assist approximately twenty (20) low-income households by providing energy efficiency improvements and minor structural repairs. NCHFA allows up to \$800 a house for administration, work write-ups and inspections. The WPCOG contract is for \$12,000 which averages out to about \$600 a house. The remaining \$88,000 will be used for rehabilitation for urgent needs such as leaking roofs, non-functional heating units, etc. The WPCOG will provide day-to-day management of the program with administration oversight being provided by the Planning Department.

### RECOMMENDATION

Staff recommends the Board of Commissioners approve the following items associated with the Catawba County 2016 Urgent Repair Program Grant:

1. Agreement between the Western Piedmont Council of Governments (WPCOG) and Catawba County for the provision of Grant Management Assistance – Urgent Repair Housing Program – August 1, 2016 – January 31, 2018;
2. Project budget ordinance in the amount of \$100,000 for rehabilitation and administration; and
3. The 2016 NCHFA Urgent Repair Grant Assistance Policy and Procurement/Disbursement Policy for Catawba County's Urgent Repair Program.

### Revenue

280-420136-630590	\$100,000
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### Expenditures

280-420136-849117 - Administration	\$12,000
280-420136-849120 - Rehabilitation	\$88,000

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

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

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

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

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

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

Revenues

North Carolina Housing Finance Agency-URP

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

Expenditures

North Carolina Housing Finance Agency-URP

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

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

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

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

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

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

Adopted this the 1st day of August, 2016.

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Chair

ATTEST:

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County Clerk



AGREEMENT BETWEEN THE  
WESTERN PIEDMONT COUNCIL OF GOVERNMENTS AND  
CATAWBA COUNTY  
FOR THE PROVISION OF  
GRANT MANAGEMENT ASSISTANCE:  
CATAWBA COUNTY URGENT REPAIR HOUSING PROJECT  
AUGUST 1, 2016–JANUARY 31, 2018

This AGREEMENT, entered into on this the 1st day of August, 2016, by and between the Western Piedmont Council of Governments (hereinafter referred to as the "Planning Agency") and Catawba County, North Carolina (hereinafter referred to as the "Local Government"); WITNESSETH THAT:

WHEREAS, the Planning Agency is empowered to provide technical assistance by the North Carolina General Statutes and by resolution passed by the Planning Agency on May 17, 1972. Technical assistance shall consist of the provision of services as described in Attachment A, which is herein made a part of this Contract;

WHEREAS, the Local Government has requested the Planning Agency to provide such technical assistance to the Local Government; and

WHEREAS, the Planning Agency desires to cooperate with the Local Government in every way possible to the end that the proposed activities are carried out in an efficient and professional manner;

NOW, THEREFORE, the parties hereto do mutually agree as follows:

1. **Personnel.** That during the period of this Contract, the Planning Agency will furnish the necessary trained personnel to the Local Government.
2. **Travel/Printing.** The Local Government will pay for expenses related to conferences, conventions, seminars, local travel, etc. of the personnel when the Local Government requests or approves travel related to the Local Government's planning program, or if it is beneficial to both parties, the costs will be shared on an agreed-upon ratio.

The Local Government will also pay for expenses related to printing of report(s), mailings to advisory boards, and other costs not related to normal travel and staffing costs associated with personnel furnished by the Planning Agency.

3. **Compensation.** The Local Government will pay the Planning Agency an amount not to exceed \$12,000 (twelve thousand dollars), or \$600 (six hundred dollars) per housing unit assisted, whichever is less, for the satisfactory performance of all services related to administration of the project as defined in the attached Scope of Services. Planning Agency personnel will keep an accurate record of time spent, which will serve as the basis for the amount charged to the Local Government per month. The Local Government will reimburse the Planning Agency monthly at a rate per hour for each of the personnel involved, which includes the salary, fringe benefits, travel and indirect costs, plus travel and other approved expenses. All other costs associated with the administration of the CDBG grant will be expended from the grant administration allowance budgeted for the Local Government. It is expressly understood and agreed that total compensation shall not exceed the maximum sum specified without prior approval of both agencies.
4. **Termination/Modifications.** The Local Government may terminate this Contract by giving the Planning Agency a thirty-day written notice. Furthermore, if there is a need to amend the proposal outlined in Attachment A, either party may do so with the written approval of the other.
5. **Time of Performance.** The Planning Agency shall ensure that all services required herein shall be completed and all required reports, maps, and documents submitted during the period beginning August 1, 2016 and ending January 31, 2018.
6. **Interest of Members, Officers, or Employees of the Planning Agency, Members of the Local Government, or Other Public Officials.** No member, officer, or employee of the Planning Agency or its agents; no member of the governing body of the locality in which the program is situated; and no other public official of such locality or localities who exercise any functions or responsibilities with respect to the program during his tenure or for one year thereafter, shall have any financial interest, either direct or indirect, in any contract or subcontract, or the proceeds thereof, for work to be performed in connection with the program assisted under this Agreement. Immediate family members of said members, officers, employees, and officials are similarly barred from having any financial interest in the program. The Planning Agency shall incorporate, or cause to be incorporated, in all such contracts or subcontracts, a provision prohibiting such interest pursuant to the purpose

of this section.

7. **Nondiscrimination Clause.** No person in the United States shall on the grounds of race, color, national origin, or sex be excluded from participation in, be denied the benefits of, or be subjected to discrimination with any program or activity funded in whole or in part with funds available under the Housing and Community Development Act of 1974, Section 109.
8. **Age Discrimination Act of 1975, as amended.** No qualified person shall on the basis of age be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity which receives or benefits from federal financial assistance.
9. **Section 504, Rehabilitation Act of 1973, as amended.** No qualified disabled person shall, on the basis of handicap be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity which receives or benefits from federal financial assistance.
10. **Access to Records and Record Retainage.** All official project records and documents must be maintained during the operation of this project and for a period of three years following closeout, in compliance with 15 NCAC 13L Rule .0911, Recordkeeping. The North Carolina Housing Finance Agency, US Department of Housing and Urban Development, the Comptroller General of the United States, or any of their duly authorized representatives shall have access to any books, documents, papers, and records of the Planning Agency which are pertinent to the execution of this Agreement, for the purpose of making audits, examinations, excerpts, and transcriptions in compliance with 15 NCAC 13L Rule .0911, Recordkeeping.
11. **Liquidated Damages Clause.** If the project fails to be carried out within the time frame outlined in the administrative proposal due to activities attributed to the Planning Agency, the Local Government may assess the Planning Agency a sum in the amount of \$100 per week for any subsequent weeks until completion.
12. **Termination of Agreement for Cause.** If, through any cause, the Planning Agency shall fail to fulfill in a timely and proper manner its obligations under this Agreement, or violate any of the covenants, conditions, or stipulations of this Agreement, the Local Government shall

thereupon have the right to terminate this Agreement by giving written notice of such termination and specifying the effective date thereof. In such event, all finished or unfinished documents, data, studies, surveys, drawings, maps, models, photographs, and reports prepared under this Agreement shall, at the option of the Local Government, become its property, and the Planning Agency shall be entitled to receive just and equitable compensation for any satisfactory work completed on such documents and other materials in direct proportion to the extent of services actually completed.

13. **Grantee Assurances.** In the performance of this Agreement, the Planning Agency shall comply with all applicable federal rules and procedures outlined on the attached pages as E.O. 11246 Clause, the Section 3 Clause, Lobbying Clause and Iran Divestment Act Certification (Attachments B,C,D and E).

IN WITNESS WHEREOF, the Planning Agency and the Local Government have executed this Agreement as of the date first above written.

LOCAL GOVERNMENT:  
CATAWBA COUNTY

PLANNING AGENCY:  
WESTERN PIEDMONT COUNCIL OF GOV'TS.

By: \_\_\_\_\_ By: \_\_\_\_\_  
County Manager Executive Director

LOCAL GOVERNMENT: PLANNING AGENCY:

By: \_\_\_\_\_ By: \_\_\_\_\_  
Chair Chairman

Preaudit statement:

This instrument has been preaudited in the manner prescribed by the Local Government Budget and Fiscal Control Act.

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

Local Government Finance Officer

CATAWBA COUNTY  
GRANTS MANAGEMENT ASSISTANCE  
WORK PROGRAM/BUDGET  
August 1, 2016– January 31, 2018

ATTACHMENT A  
SCOPE OF SERVICES

The following work program and budget are presented as descriptive of the work and dollar amounts requested in the Agreement concerning planning activities by the Western Piedmont Council of Governments for Catawba County.

Laurie Powell and Ken Hollar, CD Administrators, will be responsible for administering this project.

Work Program

Professional services necessary to administer all aspects of the project will include but not be limited to the following:

Laurie Powell will serve as Project Administrator and will be responsible for general grant administration. Quarterly status reports will be prepared and submitted to the Catawba County Board of Commissioners highlighting accomplishments and expenditures for the period. Working with the Catawba County Community Development staff, the Administrator will be responsible for public notification of grant funding, applicant intake and assistance eligibility. Other duties of the Administrator will include, but not be limited to the following:

- Preparation of required program policies, plans and procedures to govern the project and maintenance of same.
- Program financial management including processing invoices and payment for services related to the program and requisitions for payment from NCHFA.
- Applicant notifications and income, ownership verification, and notice of eligibility.
- Scheduling housing inspections with the Homeowner and Project Inspector, Mr. Hollar.
- Coordination with Program Selection Committee.
- Preparation of program documents, i.e.; Work Contract, Contractor's Release of Liens, Grant Agreement, Final Inspection Form and Owner Certificate of Satisfaction for a minimum of twenty (20) homes.
- Preside at pre-construction conferences.
- Resolve disputes between homeowners and contractors, etc.
- Be present at all monitoring visits by NCHFA personnel.

Duties of the Project Inspector, Ken Hollar will include, but not be limited to the following:

- Initial, bi-weekly and final housing inspections.
- Preparation of work write-up, bid packets, cost estimates and bid openings.
- Be present at all pre-construction conferences.
- Monitor compliance with URP Program Rehabilitation Standards and all applicable local and state building codes.
- Serve as Lead Based Paint Inspector and follow all program requirements as related to same.
- Verification of Contractor eligibility.
- Initiate contractor payments and approve change orders as needed.

Catawba County will be responsible for the following:

- Adequate office space including utilities.
- Direct payment of URP funds for legal and audit services and general administrative costs.
- All administrative costs not specifically identified as WPCOG responsibilities.

#### Time of Performance

The WPCOG will complete all activities involved in administration of this project in an 18-month period beginning August 1, 2016, and ending January 31, 2018.

#### Budget

The WPCOG will provide these administrative and construction services for a fee not to exceed \$12,000. The budget is broken down as follows:

Salaries	\$ 5,400
Fringe Benefits	2,808
Travel	1,239
Indirect	<u>2,553</u>
Total	\$ 12,000

#### Assurances

Assurances are attached as a part of the Agreement.

## Amendments

This scope of services and budget may be amended as desired by mutual consent of the Local Government and Planning Agency.

### ASSURANCES OF COMPLIANCE

#### ATTACHMENT B

##### Executive Order 11246

During the performance of this Contract, the contractor agrees as follows:

- 1) The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, age, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, age, or national origin. Such action shall include, but not be limited to the following: recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of this nondiscrimination clause.
- 2) The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, age, or national origin.
- 3) The contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, notice advising the labor union or workers' representative of the contractor's commitments under section 202 of Executive Order 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- 4) The contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations and relevant orders of the Secretary of Labor.
- 5) The contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the contracting agency and the Secretary of Labor for purposes of

investigation to ascertain compliance with such rules, regulations, and orders.

6) In the event of the contractor's noncompliance with the nondiscrimination clauses of this contract or with any of such rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies involved as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

7) The contractor will include the provisions of paragraphs (1) through (7) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as the contracting agency may direct as a means of enforcing such provisions including sanctions for noncompliance: Provided, however, that in the event the contractor becomes involved in, or threatened with, litigation with a subcontractor or vendor as a result of such direction by the contracting agency, the contractor may request the United States to enter into such litigation to protect the interests of the United States.



## ATTACHMENT C

### Section 3 Clause

"Section 3" Compliance in the Provision of Training, Employment, and Business Opportunities

a. The work to be performed under this contract is on a project assisted under a program providing direct federal financial assistance from the Department of Housing and Urban Development and is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u. Section 3 requires that to the greatest extent feasible opportunities for training and employment be given lower income residents of the project area and contracts for work in connection with the project be awarded to business concerns which are located in, or owned in substantial part by persons residing in the area of the project.

b. The parties to this contract will comply with the provisions of said Section 3 and the regulations issued pursuant thereto by the Secretary of Housing and Urban Development set forth in 24 CFR 135, and all applicable rules and orders of the Department issued thereunder prior to the execution of this contract. The parties to this contract certify and agree that they are under no contractual or other disability which would prevent them from complying with these requirements.

c. The contractor will send to each labor organization or representative of workers with which he has a collective bargaining agreement or other contract or understanding, if any, a notice advising the said labor organization or workers representative of his commitments under this Section 3 clause and shall post copies of the notice in conspicuous places available to employees and applicants for employment and training.

d. The contractor will include this Section 3 clause in every subcontract for work in connection with the project and will, at the direction of the applicant or recipient of federal financial assistance, take appropriate action pursuant to the subcontract upon a finding that the subcontractor is in violation of regulations issued by the Secretary of Housing and Urban Development, 24 CFR Part 135. The contractor will not subcontract with any subcontractor where it has notice of knowledge that the latter has been found in violation of regulations under 24 CFR Part 135 and will not let any subcontract unless the subcontractor has first provided it with a preliminary statement of ability to comply with the requirements of these regulations.

e. Compliance with the provisions of Section 3, the regulations set forth in 24 CFR Part 135, and all applicable rules and orders of the Department issued hereunder prior to the execution of the contract, shall be a condition of the federal financial assistance provided to the project, binding upon the applicant or recipient for such assistance, its successors and assigns. Failure to fulfill these requirements shall subject the applicant or recipient, its contractors and subcontractors, its successors or assigns to those sanctions specified by the grant or loan agreement of contract through which federal assistance is provided, and to such sanctions as are specified by 24 CFR Part 135.

## ATTACHMENT D

### Lobbying Clause

No Federal appropriated funds have been paid or will be paid, by or on behalf of the Planning Agency or the Local Government, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative, agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

If any funds other than Federal appropriated funds have been paid or will be paid any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the Planning Agency and/or the Local Government shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

ATTACHMENT E

**IRAN DIVESTMENT ACT CERTIFICATION REQUIRED BY N.C.G.S. 143C-6A-5(a)**

Western Piedmont Council of Governments

As of the date listed below, the Western Piedmont Council of Governments (WPCOG) warrants and certifies that it is not identified on the Final Divestment List created by the North Carolina State Treasurer pursuant to N.C.G.S. 143-6A-4 and found at [www.nctreasurer .com/Iran](http://www.nctreasurer.com/Iran). The person signing this certification certifies that he or she is authorized by the WPCOG to make the foregoing certification. The WPCOG further agrees that it will not utilize any subcontractor that is identified on the Final Divestment List in connection with any contract or bid with Catawba County.

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Signature

Date

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Anthony Starr

Printed Name

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Executive Director

Title

**Catawba County  
Assistance Policy  
For the 2016 Cycle of the Urgent Repair Program**

**What is the Urgent Repair Program?** Catawba County has been awarded \$100,000 by the North Carolina Housing Finance Agency (“NCHFA”) under the 2016 cycle of the Urgent Repair Program (“URP16”). This program will be used to provide urgent repair funds to twenty (20) homes scattered throughout all of Catawba County, including all towns, cities and municipalities with the exception of the City of Hickory in the 2016/2017 fiscal year. This program provides funds to assist very-low and low- income households with special needs in addressing housing conditions which pose imminent threats to their life and/or safety or to provide accessibility modifications and other repairs necessary to prevent displacement of very-low and low- income homeowners with special needs such as frail elderly and persons with disabilities

This Assistance Policy describes who is eligible to apply for assistance under URP16, how applications for assistance will be rated and ranked, what the form of assistance is and how the repair/modification process will be managed. Catawba County has tried to design this URP16 project to be fair, open, and consistent with its approved application for funding and with NCHFA’s URP Program Guidelines.

The funds provided by NCHFA come from the North Carolina Housing Trust Fund.

**Eligibility** To be eligible for assistance under URP16 applicants

- 1) must reside within the limits of Catawba County and own and occupy the home in need of repair
- 2) must have a household income which does not exceed 50% of each County’s median income for the household size (see income limits below)
- 3) must have a household member who has a special need (i.e., elderly - at least 62 years old, handicapped or disabled, a single parent with at least one dependent child living at home, a large family with  $\geq 5$  household members or a household with a child below the age of six with an elevated blood lead level.)
- 4) must have urgent repair needs, which can not be met through other state or federally- funded housing assistance programs

**URP16 Income Limits for Catawba County**

Number in Household	30% of Median (very-low income)	50% of Median (low income)
1	\$11,000	\$18,300
2	\$12,550	\$20,900
3	\$14,100	\$23,500
4	\$15,650	\$26,100
5	\$16,950	\$28,200
6	\$18,200	\$30,300
7	\$19,450	\$32,400
8	\$20,700	\$34,500

\*Income limits are subject to change based on annually published HUD HOME Limits.

**Advertisement of Urgent Repair Program** Catawba County will either advertise or will publish an article in the local newspaper serving Catawba County (The Hickory Daily Record or The Observer News Enterprise). Catawba County has retained names of individuals who have in the past requested housing assistance through the Western Piedmont Council of Governments (WPCOG). WPCOG staff will send each of these individuals the Assistance Policy and an application for assistance when the program is advertised in the newspapers.

### **Selection of applicants**

Income and property ownership will be verified, and eligibility requirements be determined.

The applicants from each county selected to receive assistance through the WPCOG Urgent Repair Program will be selected on a first-come, first-served basis within appropriate income categories. Under NCHFA Program Guidelines, a minimum of 50% of households assisted must have incomes which are less than 30% of the area median income for the household size (very low-income), and no household with an income exceeding 50% of the area median income (low-income) will be eligible. In the event of a life-threatening situation, a household could be served immediately.

Recipients of assistance under the URP16 will be chosen by the above criteria without regard to race, religion, sex, color, national origin, handicapping condition or family status of the owners or occupants.

**The definitions of special needs' populations under URP16 are:**

- *Elderly:* An individual aged 62 or older.
- *Disabled:* A person who has a physical, mental or developmental disability that greatly limits one or more major life activities, has a record of such impairment, or is regarded as having such an impairment. A person whose sole impairment is alcoholism or drug addiction shall not be considered handicapped or disabled under the URP16.
- *Large Family:* A large family household is composed of five or more individuals; at least four are immediate family members.
- *Head of Household:* The person or persons who own(s) the house.
- *Household Member:* Any individual who is an occupant (defined below) of the unit to be rehabilitated shall be considered a "household member" (the number of household members will be used to determine household size and all household members except full-time students are subject to income verification).
- *Occupant:* An occupant is defined as any immediate family member (mother, father, spouse, son/daughter of the head of the household, regardless of the time of occupancy); or non-immediate family member who has resided in the dwelling at least 3 months prior to the submission of the family's application.
- *Single-Parent Household:* A household in which one and only one adult resides with one or more dependent children.
- *Child with elevated blood lead level:* a child below the age of six with an elevated blood lead level.

**\*\*Military veteran:** A person who served in the active military, naval, or air service, and who was discharged or released therefrom under conditions other than dishonorable. The term 'military' for the purposes of URP eligibility shall be defined as: Army, Navy, Air Force, Marine Corps, and Coast Guard; as a commissioned officer of the Public Health Service; or as a commissioned officer of the National Oceanic and Atmospheric Administration (NOAA) or its predecessors.

**Client Referrals for Support Services** Many of the homeowners assisted may also need other services. When the Administrator and the Housing Specialist meet at the home to develop the work write-up, the Administrator will educate the homeowner about available resources and programs that are available to the applicant. If available, pamphlets or other printed materials will be given to the applicant. With the applicant's permission, the Administrator will then contact the agency on behalf of the client to ensure that needed services and assistance are available. A case management system will be in place that will provide for follow-up of these services. The Administrator will contact the agency to be certain that these special needs were provided. Agencies in the referral network include the Department of Social Services (food stamps, fuel assistance, other assistance), Health Department (health care), Home Health Care Agencies (health care, housekeeping and transportation), Greenway Public Transportation, Senior Center (socialization and other services), County Tax Office (Homestead Act), local crisis centers (food, clothing and emergency services), Nutrition Sites (meals), Veteran's Administration (benefits), Duke Power (reduced rates for SSI head-of-households), Independent Living.

**What is the form of assistance under URP16?** Catawba County will provide assistance to homeowners, whose homes are selected for repair/modification, in the form of a **loan**. Homeowners will receive an **unsecured deferred, interest-free loan**, forgiven at a rate of \$1,000 per year, until the principal balance is reduced to zero.

**What is the amount of the loan?** The amount of the loan will depend on the scope of work necessary to address the identified imminent threats to life and/or safety, and that will be determined by the WPCOG's Rehabilitation Specialist. There is no minimum to the amount of the loan; however the maximum life-time limit according to the guidelines of URP16 is \$8,000.

**What kinds of work will be done?** Only repairs that address imminent threats to the life and/or safety of occupants of the dwelling unit or accessibility modifications will be performed under the Catawba County's URP. It should be noted that all deficiencies in a home may not be rectified with the available funds. The URP16 program does not obligate Catawba County or the North Carolina Housing Finance Agency to make the home conform to any local, state, or federal housing quality standards.

**\*\*Roofs for double wide mobile homes** will be considered on a case by case bases after inspected by Community Development Staff.

All work that is completed under URP16 must meet or exceed NC Residential Building Code.

**Who will do the work on the homes?** Catawba County is obligated under URP16 to ensure that quality work is done at reasonable prices and that all work is contracted through a fair, open and competitive process. To meet those very difficult requirements, the Catawba County will invite bids only from contractors who are part of an “approved contractors’ registry”.

To be on the registry, contractors must (1) fill out an application form, listing several references and recent jobs completed, (2) have North Carolina Renovation, Repair and Painting Firm Certification, (3) receive the “conditional approval” of Catawba County. Once a contractor who has been conditionally approved has successfully completed one job for the Catawba County, his or her status is upgraded to “regular approval”, meaning that they will be allowed to bid on a regular rotation as long as they remain in good standing. (Homeowners who know of quality rehabilitation contractors that are not on Catawba County’s Approved Contractors Registry are welcome to invite them to apply.)

A minimum of three approved contractors will be invited to bid on each job, and the lowest responsive and responsible bidder will be selected for the contract. “Responsive and responsible” means the contractor (1) is deemed able to complete the work in a timely fashion, and (2) that the bid is within 15% (in either direction) of the WPCOG’s cost estimate.

In the case of a life threatening emergency, bids may be solicited by telephone or facsimile.

### **What are the steps in the process, from application to completion?**

- 1. Completing an Application form:** Apply by contacting Laurie Powell, 828-322-9191 ext. 249 Community Development Administrator, at the Western Piedmont Council of Governments. Proof of ownership and income will be required. Those who have applied for housing assistance from Catawba County in the past will not automatically be reconsidered. A new application will need to be submitted.
- 2. Screening of applicants:** Household income will be verified for program purposes only (information will be kept confidential). Ownership of property will be verified.
- 3. Preliminary inspection:** The WPCOG’s Rehabilitation Specialist, Ken Hollar, and a Program Administrator will visit the homes of potential loan recipients to determine the need and feasibility of repairs/modifications. The Eligibility Certificate will be completed at this time. All parts of the home must be made accessible for inspection, including the attic and crawlspace, if any. The owner should report any known problems such as electrical short circuits, blinking lights, roof leaks and the like. The owner will be provided detailed information on assistance, program repair/modification standards and the contracting procedures associated with the project.
- 4. Applicant interviews:** Approved applicants will be provided detailed information on assistance, program repair/modification standards and the contracting procedures

associated with their project at this informational interview. If staff determines the need for support services, those services will be explained at this time.

5. **Work write-up:** The Rehabilitation Specialist will prepare complete and detailed work specification (known as the "work write-up"). A final cost estimate will also be prepared by the Rehabilitation Specialist and held in confidence until bidding is completed.
6. **Bidding:** The work write-up and bid documents will be mailed to a minimum of three contractors on the Approved Contractors' Registry who will be given one week in which to inspect the property and prepare bid proposals. The names of the invited contractors will be supplied to the homeowner. Each will need access to those areas of the house, in which work is to be performed, in order to prepare a bid. A bid opening will be conducted at the WPCOG's Community Development Office at a specified date and time, with all bidders and the homeowner invited to attend.
7. **Contractor selection:** Within 24 hours of the bid opening, after review of bid breakdowns and timing factors, the winning bidder will be selected. All bidders and the homeowner will be notified of (1) the selection, (2) the amount, (3) the amount of the WPCOG's cost estimate, and (4) if other than the lowest bidder is selected, of the specific reasons for the selection.
8. **Execution of loan and contract:** A promissory note will be executed as well as the repair/modification contract. This contract will be between the contractor and the homeowner, with the WPCOG signing as an interested third party.
9. **Pre-construction conference:** A pre-construction conference will be held at the home. At this time, the homeowner, contractor and program representatives will discuss the details of the work to be done. Starting and ending dates will be agreed upon, along with any special arrangements such as weekend or evening work hours and disposition of items to be removed from the home (such as old plumbing, etc.). Within 24 hours of the pre-construction conference, the WPCOG will issue a "proceed order" formally instructing the contractor to commence by the agreed-upon date.
10. **Construction:** The contractor will be responsible for obtaining any required building permits for the project before beginning work. The permit must be posted at the house during the entire period of construction. Program staff will closely monitor the contractor during the construction period to make sure that the work is being done according to the work write-up (which is made a part of the rehabilitation contract by reference) and in a timely fashion. Code Enforcement Officers will inspect new work for compliance with the State Building Code as required by the guidelines of URP16. The homeowner will be responsible for working with the contractor toward protecting personal property by clearing work areas as much as practicable.
11. **Change Orders:** All changes to the scope of work must be reduced to writing as a contract amendment ("change order") and approved by all parties to the contract: the owner, the contractor and two representatives (one from the WPCOG and one from Catawba County). If the changes require an adjustment in the loan amount, a



loan modification stating these changes in the contract amount must be completed by Catawba County, and executed by the owner.

**12. Payments to contractor:** The contractor will be paid following inspection of and satisfactory completion of all items on the work write-up, as well as, the receipt, by Catawba County, of the contractor's invoice and a release of liens, signed by all any sub-contractors employed on the job and by all material suppliers from whom materials for the job were purchased.

**13. Post-construction conference:** Following construction the contractor and the Rehabilitation Specialist will sit down with the homeowner one last time. At this conference the contractor will hand over all owner's manuals and warranties on equipment. The contractor and Rehabilitation Specialist will go over operating and maintenance requirements for any new equipment installed and discuss general maintenance of the home with the homeowner. The homeowner will have the opportunity to ask any final questions about the work.

**14. Closeout:** Once each item outlined in section 13 has been satisfied and the homeowner has signed a Certificate of Satisfaction, the job will be closed out.

**What are the key dates?** If, after reading this document, you feel that you qualify for this program and wish to apply, please keep the following dates in mind:

- Applications available to the public starting fall of 2016.
- All work will be under contract by November 30, 2017.
- All rehabilitation work must be completed by December 31, 2017.

**How do I request an application?** Just contact:

Laurie Powell (828-322-9191ext. 249)  
Western Piedmont Council of Governments  
P.O. Box 9026  
Hickory, NC 28603

Or pick up an application at the WPCOG's offices, 1880 2<sup>nd</sup> Avenue NW, Hickory or at the Administrative Offices of Catawba County.

**Is there a procedure for dealing with complaints, disputes and appeals?** Although the application process and repair/modification guidelines are meant to be as fair as possible, Catawba County realizes that there is still a chance that some applicants or participants may feel that they are not treated fairly. The following procedures are designed to provide an avenue for resolution of complaints and appeals.

During the application process:

1. If an applicant feels that his/her application was not fairly reviewed or rated and would like to appeal the decision made about it, he/she should contact Laurie Powell within five days of the initial decision and voice his/her concern. If the applicant remains dissatisfied with the decision, the detailed complaint should be put into writing.

2. Any complaint and/or appeal must be submitted in writing to Catawba County Program Administrator at the following address:

Program Administrator-Laurie Powell  
Catawba County Urgent Repair Program  
C/O Catawba County Planning and Recreation  
P.O. Box 389  
Newton, NC 28658  
Phone: (828) 322-9191, Ext#249  
TDD Relay # 1-800-735-2962

3. A written appeal must be made within 10 business days of the initial decision on an application.
4. Catawba County will respond in writing to any complaints or appeals within 10 business days of receiving written comments.

During the repair/modification process:

1. If the homeowner feels that repairs or modifications are not being completed according to the contract, he/she must inform the contractor and the Rehabilitation Specialist.
2. The Rehabilitation Specialist will inspect the work in question. If he finds that the work is not being completed according to contract, the Rehabilitation Specialist will review the contract with the contractor and ask the contractor to remedy the problem.
3. If problems persist, a mediation conference between the homeowner and the contractor may be convened by the Rehabilitation Specialist and facilitated by the Catawba County.
4. Should the mediation conference fail to resolve the dispute, the Rehabilitation Specialist will render a written final decision.
5. If the Rehabilitation Specialist finds that the work is being completed according to contract, the complaint will be noted and the Rehabilitation Specialist and the homeowner will discuss the concern and the reason for the Rehabilitation Specialist's decision.

**Will the personal information provided remain confidential?** Yes. All information in applicant files will remain confidential. Access to the information will be provided only to the WPCOG employees and Catawba County employees who are directly involved in the program, the North Carolina Housing Finance Agency and auditors.

**What about conflicts of interest?** No officer, employee or other public official of the Catawba County, or member of the Commissioners Board, or entity contracting with the Catawba County who exercises any functions or responsibilities with respect to URP16 shall have any interest, direct or indirect, in any contract or subcontract for work to be performed with program funding, either for themselves or those with whom they have family or business ties, during their tenure or for one year thereafter. Relatives of Catawba County employees, Commissioners Board Members and others closely identified with Catawba County or the WPCOG may be approved for rehabilitation assistance only upon public disclosure before the Catawba County Policy Board and written permission from NCHFA.

**What about favoritism?** All activities under URP16, including rating and ranking applications, inviting bids, selecting contractors and resolving complaints, will be conducted in a fair, open and non-discriminatory manner, entirely without regard to race, creed, sex, color or national origin.

**Who can I contact about URP16?** Any questions regarding any part of this application or program should be addressed to:

Laurie Powell (828-322-9191, Ext#249)  
Western Piedmont Council of Governments  
PO Box 9026  
Hickory, NC 28603

Copies of all referenced materials contained in this Assistance Policy may be obtained from Catawba County, 100-A SW Blvd, PO Box 389, Newton, NC 28658.

These contacts will do their utmost to answer questions and inquiries in the most efficient and correct manner possible.

This Assistance Policy is adopted this \_\_\_\_\_ day of \_\_\_\_\_, 2016.

\_\_\_\_\_  
Attest

\_\_\_\_\_  
Chair, County Commissioners

**CATAWBA COUNTY  
URGENT REPAIR PROGRAM (URP 16)  
PROCUREMENT AND DISBURSEMENT POLICY**

**PROCUREMENT POLICY**

1. To the maximum extent practical, Catawba County promotes a fair, open and competitive procurement process as required under the North Carolina Housing Finance Agency's Urgent Repair Program (URP). Bids are invited from Contractors who are part of Catawba County's approved contractor registry. (To be on the registry, a contractor must complete an application, have their recent work inspected, reviewed and approved by the Rehabilitation Specialist and submit proof of insurance.) Any contractor listed with and approved by Catawba County and in good standing will receive automatic approval status on the contractor registry.
2. At least three eligible contractors on Catawba County's approved contractor registry shall be invited to bid on each job and the lowest responsive and responsible bidder shall be selected for the contract. "Responsive and responsible" means (a) the contractor is deemed able to complete the work in a timely fashion, (b) the bid is within 15%, in either direction, of the WPCOG's cost estimate, and (c) there is no conflict of interest (real or apparent).
3. Although bid packages may be bundled for multiple job sites, the bids for multiple job sites shall be considered separate and apart when awarded and shall be awarded to the lowest responsive and responsible bidder(s) for each job site.
4. Bid packages shall consist of an invitation to bid, work write up(s) and bid sheet(s) for each job.
5. Bids must include a cost-per-item breakdown with line item totals equaling the submitted bid price. Discrepancies must be reconciled prior to a contract being awarded.
6. Any change to the original scope of work must be reduced to writing in the form of a change order to be agreed upon and signed by all parties to the original contract and two representatives of Catawba County. The change order must also detail any changes to the original contract price.
7. No work may begin prior to a contract being awarded and a written order to proceed provided to the contractor. In addition, a pre-construction conference and "walk thru" shall be held at the work site prior to commencement of repair work.
8. Catawba County reserves the right to reject any or all bids at any time during the procurement process if there is a sound documented reason.
9. In the event of a true emergency situation, Catawba County reserves the right to waive normal procurement procedures in favor of more expedient methods, which may include seeking telephone quotes, faxed bids and the like. Should such methods ever become necessary the transaction will be fully documented.

10. All sealed bids will be opened publicly at a time and place to be announced in the bid invitation. All bidders are welcome to attend.

### **DISBURSEMENT POLICY**

1. All repair work must be inspected by (a) the WPCOG's Housing Inspector, and (b) the homeowner prior to any payments to contractors. If all work is deemed satisfactory and all other factors and written agreements are in order, payment shall be issued upon presentation of an original invoice from the contractor. Contractor should allow 21 business days for processing of the invoice for payment.
2. If any of the work is deemed unsatisfactory, it must be corrected prior to authorization of payment. If the contractor fails to correct the work to the satisfaction of the WPCOG's Housing Inspector, payment may be withheld until such time the work is satisfactory. (Contractors may follow Catawba County's Urgent Repair Program Assistance Policy if a dispute occurs; however, contractors shall abide by the final decision as stated in the policy).
3. Catawba County assures, through this policy, that adequate funds shall be available to pay the contractor for satisfactory work.
4. All contractors, sub-contractors and suppliers must sign a lien waiver prior to disbursement of funds.

The Procurement and Disbursement Policies are adopted this the \_\_\_\_\_ day of \_\_\_\_\_, 2016.

### **Catawba County**

BY: \_\_\_\_\_  
Chair, County Commissioners

ATTEST: \_\_\_\_\_  
Clerk to the Commissioners

### **CONTRACTORS STATEMENT:**

I have read and understand the attached Procurement and Disbursement Policy.

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

COMPANY NAME: \_\_\_\_\_

WITNESS: \_\_\_\_\_

## MEMORANDUM

TO: Catawba County Board of Commissioners

FROM: David Boone, Sr. VP Finance/CFO  
Catawba Valley Medical Center

DATE: August 1, 2016

SUBJECT: Refunding of Series 2009 and 2010 Bonds

### REQUEST

Catawba Valley Medical Center (CVMC) is requesting the Board of Commissioners to adopt two separate resolutions authorizing the refunding of CVMC's Series 2009 and 2010 bonds.

### BACKGROUND

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

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

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

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

Dixon.

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

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

#### RECOMMENDATION

Staff recommends the Board of Commissioners adopt two separate resolutions authorizing the refunding of CVMC's Series 2009 and 2010 bonds.

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

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

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

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

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

\* \* \* \* \*

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

debt is a key component of CVMC's management of its liabilities in concert with its short-term liquid assets.

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

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

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

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

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

Section 8. The Chairman, the Vice-Chairman, the County Manager, the Chief Financial Officer, the County Attorney and the Clerk to the Board of Commissioners, or any of them or their deputies, are hereby authorized, jointly and severally, in the event that the LGC

requires the County to enter into a derivative agreement with respect to all or a portion of the Bonds, to solicit proposals for a derivative agreement from one or more counterparties, to negotiate the terms and provisions thereof, to approve the terms and provisions thereof on behalf of the Board and to take any and all such other action necessary or appropriate to effectuate the implementation of a derivative agreement with respect to all or a portion of the Bonds.

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

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

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

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

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

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Clerk to the Board of Commissioners

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

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

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

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

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

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

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

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

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

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

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

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

(b) a Covenant Agreement, proposed to be dated as of August 1, 2016 (the "Covenant Agreement"), between the County, CVMC and Branch Banking and Trust Company ("BB&T"); as the initial purchaser of the Bonds; and

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

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

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

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

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

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

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

Section 4. The Chairman, the Vice-Chairman, the County Manager, the Chief Financial Officer, the County Attorney and the Clerk to the Board of Commissioners, or any of them or their deputies, are hereby authorized to take any and all such further action, and to execute and deliver for and on behalf of the County such other documents and certificates as they

may deem necessary or advisable to carry out the intent of this resolution and to effect the issuance of the Bonds pursuant to the Second Supplement and the other Financing Documents. The Clerk to the Board of Commissioners is hereby authorized to affix the seal of the County to such documents and certificates as may be appropriate and to attest to the same and to execute and deliver such certificates as may be appropriate.

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

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

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

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

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

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

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

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Clerk to the Board of Commissioners

## **MEMORANDUM**

TO: Catawba County Board of Commissioners

FROM: Jack I. Chandler, Assistant U&E Director  
Debbie S. Anderson, Purchasing Manager

DATE: August 1, 2016

IN RE: Engineering Contract Award for Subtitle D Municipal Solid Waste Landfill Cell Unit 3  
Phase 2

### **REQUEST**

Staff requests the Board of Commissioners approve an engineering contract between Catawba County and CDM Smith for the design and permitting of the Subtitle D Municipal Solid Waste Landfill Cell Unit 3, Phase 2 in the amount of \$339,800.00.

### **BACKGROUND**

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

North Carolina General Statute 143-64.31, Declaration of public policy, governs the solicitation of engineering services by local governments. In keeping with NCGS 143-64.31 staff issued a Request for Qualifications (RFQ) on February 18, 2016 which was sent to numerous engineering firms and advertised on the County's Website. Five statements of qualification were received on March 24, 2016 from the following respondents:

CDM Smith, Charlotte, NC  
Environmental Infrastructure Consulting, Roswell, GA  
McGill Associates, Asheville, NC  
SCS Engineers, Charlotte, NC  
Garrett & Moore, Inc., Cary, NC

The Selection Committee, consisting of Utilities and Engineering Director, Barry Edwards, Assistant U&E Director, Jack Chandler, Landfill Superintendent, Rodney Hamby, and Purchasing Manager, Debbie Anderson reviewed the Statements of Qualification. Based on the Committee members review of the Qualifications and interviews with CDM Smith and McGill Associates, staff recommends CDM Smith.

CDM Smith is familiar with the County's Solid Waste Management Plan and has been instrumental to Catawba County in solid waste projects and planning since 2002 including:

- **Landfill Projects**
  - 2 Landfill Siting Studies
  - An Alternative Siting Study
  - Alternative Daily Cover Material Feasibility Study
- **Landfill Gas Projects**
  - Landfill Gas/Methane Migration (Blackburn & Newton Landfills)
  - Landfill Gas to Energy (Newton Landfill)
  - New Landfill Gas Compression & Conditioning Skid (Blackburn Landfill)
- **Air Quality Compliance**
  - Greenhouse Gas Monitoring (Blackburn & Newton Landfills)
  - EPA Air Quality Reporting (Blackburn & Newton Landfills)
  - Title V Permit Compliance (Blackburn Landfill)
  - Emissions Performance Testing (Blackburn Landfill)
  - Methane Emissions Sweeps (Blackburn Landfill)
- **Other Projects**
  - Gregory Woods Pump Station & sanitary Sewer Project (this project provided sewer service to the landfill allowing the County to discontinue pumping and hauling of landfill leachate)
  - Design & Construction Administration of the LEED Certified Biodiesel Research & Production Facility

The contract for engineering services with CDM Smith includes design in accordance with State regulations to obtain a Permit to Construct MSW Landfill Cell Unit 3, Phase 2. These regulations require twelve (12) months of hydrogeological investigations and data analysis, an overall facility plan, an engineering plan, a construction quality assurance plan, an operations plan, and a closure/post-closure plan to be submitted to NC Department of Environmental Quality (DEQ), Solid Waste Section for approval and issuance of the Permit to Construct. DEQ approval is anticipated to take twelve (12) months. The construction is expected to take twelve (12) months. While it may appear that Unit 3 Phase 2 will be completed nine (9) to twelve (12) months early, neither the DEQ permit approval nor the construction timelines are guaranteed. Therefore, staff is allowing some extra time in the schedule in order to be ready when the current cell reaches capacity.

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

#### **RECOMMENDATION**

Staff recommends the Board of Commissioners approve an engineering contract between Catawba County and CDM Smith for the design and permitting of the Subtitle D Municipal Solid Waste Landfill Cell Unit 3, Phase 2 in the amount of \$339,800.00.





**AGREEMENT  
BETWEEN  
OWNER AND ENGINEER**

THIS IS AN AGREEMENT made as of July 1, 2016 between Catawba County ("OWNER") and CDM Smith ("ENGINEER").

OWNER's Project is generally identified as Blackburn Landfill Unit 3, Phase 2 Expansion (the "Project").

OWNER and ENGINEER, in consideration of their mutual covenants herein, agree in respect of the performance or furnishing of services by ENGINEER to the Project and the payment for those services by OWNER as set forth below. Execution of this Agreement by ENGINEER and OWNER constitutes OWNER's written authorization to ENGINEER to proceed on the date first above written with the Services described in Article 1 below. This Agreement will become effective on the date first above written.

**ARTICLE 1 – SCOPE OF SERVICES**

- 1.1 ENGINEER agrees to perform, or cause to be performed, for OWNER services as described in Exhibit A (hereinafter referred to as "Services"), attached and incorporated herein in accordance with the requirements outlined in this Agreement.

**ARTICLE 2 – TIMES FOR RENDERING SERVICES**

- 2.1 Specific time periods and/or specific dates for the performance of ENGINEER's Services are set forth in Exhibit A.
- 2.2 If, through no fault of Engineer, such periods of time or dates are changed, or the orderly and continuous progress of Engineer's services is impaired, or Engineer's services are delayed or suspended, then the time for completion of Engineer's services, and the rates and amounts of Engineer's compensation, shall be adjusted equitably.
- 2.3 If Owner authorizes changes in the scope, extent, or character of the Project or Engineer's services, then the time for completion of Engineer's services, and the rates and amounts of Engineer's compensation, shall be adjusted equitably.
- 2.4 Owner shall make decisions and carry out its other responsibilities in a timely manner so as not to delay the Engineer's performance of its services. If ENGINEER's services are delayed or suspended in whole or in part by OWNER for more than three months through no fault of ENGINEER, ENGINEER shall be entitled to equitable adjustment of the schedule and of rates and amounts of compensation provided for elsewhere in this Agreement to reflect, among other things, reasonable costs incurred by ENGINEER in connection with such delay or suspension and reactivation.

**ARTICLE 3 – OWNER'S RESPONSIBILITIES**

OWNER shall:

- 3.1 Pay the ENGINEER in accordance with the terms of this Agreement.
- 3.2 Designate in writing a person to act as OWNER's representative with respect to the services to be performed or furnished by ENGINEER under this Agreement. Such person will have complete authority to transmit instructions, receive information, interpret, and define OWNER's policies and decisions with respect to ENGINEER's services for the Project.

- 3.3 Provide all criteria and full information as to OWNER's requirements for the Project, including, as applicable to the Services, design objectives and constraints, space, capacity and performance requirements, flexibility and expandability, and furnish copies of all design and construction standards which OWNER will require to be included in the Drawings and Specifications.
- 3.4 Be responsible for all requirements and instructions that it furnishes to Engineer pursuant to this Agreement, and for the accuracy and completeness of all programs, reports, data, and other information furnished by Owner to Engineer pursuant to this Agreement. Engineer may use and rely upon such requirements, programs, instructions, reports, data, and information in performing or furnishing services under this Agreement, subject to any express limitations or reservations applicable to the furnished items.
- 3.5 Give prompt written notice to ENGINEER whenever OWNER observes or otherwise becomes aware of any development that affects the scope or time of performance or furnishing of ENGINEER's Services or any relevant, material defect or nonconformance in ENGINEER's Services or in the work of any Contractor employed by Owner on the Project.
- 3.6 Bear all costs incident to compliance with the requirements of this Article 3.

#### **ARTICLE 4 – PAYMENTS TO ENGINEER FOR SERVICES**

- 4.1 Methods of Payment for Services of ENGINEER.
  - 4.1.1 OWNER shall pay ENGINEER for Services performed or furnished under this Agreement or as described in Exhibit A. The amount of any excise, VAT, or gross receipts tax that may be imposed shall be added to the compensation shown in Exhibit A. If after the Effective Date any governmental entity takes a legislative action that imposes additional sales or use taxes on Engineer's services or compensation under this Agreement, then Engineer may invoice such additional taxes for reimbursement by Owner. Owner shall reimburse Engineer for the cost of such invoiced additional taxes in addition to the compensation to which Engineer is entitled.
  - 4.1.2 Invoices for Services will be prepared in accordance with ENGINEER's standard invoicing practices and will be submitted to OWNER by ENGINEER at least monthly. Payments are due within 30 days of receipt of invoice.
  - 4.1.3 If OWNER fails to make any payment due ENGINEER for services and expenses within thirty days after receipt of ENGINEER's invoice therefor, the amounts due ENGINEER will be increased at the rate of 1.0% per month (or the maximum rate of interest permitted by law, if less) from said thirtieth day; and, in addition, ENGINEER may, after giving seven days' written notice to OWNER, suspend services under this Agreement until ENGINEER has been paid in full all amounts due for services, expenses and charges. Payments will be credited first to interest and then to principal. In the event of a disputed or contested billing, only that portion so contested may be withheld from payment, and the undisputed portion will be paid.

OWNER agrees to pay ENGINEER all costs of collection including but not limited to reasonable attorneys' fees, collection fees and court costs incurred by ENGINEER to collect properly due payments.

#### **ARTICLE 5 – GENERAL CONDITIONS**

- 5.1 Standard of Care  
The standard of care for all professional engineering and related services performed or furnished by ENGINEER under this Agreement will be the care and skill ordinarily used by members of

ENGINEER's profession practicing under similar conditions at the same time and in the same locality. Engineer makes no warranties, express or implied, under this Agreement or otherwise, in connection with any services performed or furnished by Engineer.

5.2 Technical Accuracy

Owner shall not be responsible for discovering deficiencies in the technical accuracy of Engineer's services. Engineer shall correct deficiencies in technical accuracy without additional compensation, unless such corrective action is directly attributable to deficiencies in Owner-furnished information.

5.3 Opinions of Probable Construction Cost

Engineer's opinions (if any) of probable Construction Cost are to be made on the basis of Engineer's experience, qualifications, and general familiarity with the construction industry. However, because Engineer has no control over the cost of labor, materials, equipment, or services furnished by others, or over contractors' methods of determining prices, or over competitive bidding or market conditions, Engineer cannot and does not guarantee that proposals, bids, or actual Construction Cost will not vary from opinions of probable Construction Cost prepared by Engineer. If Owner requires greater assurance as to probable Construction Cost, then Owner agrees to obtain an independent cost estimate.

5.4 Compliance with Laws and Regulations, and Policies and Procedures

5.4.1 Engineer and Owner shall comply with applicable Laws and Regulations.

5.4.2 This Agreement is based on Laws and Regulations procedures as of the Effective Date. Changes after the Effective Date to Laws and Regulations may be the basis for modifications to Owner's responsibilities or to Engineer's scope of services, times of performance, or compensation.

5.4.3 Engineer shall not be required to sign any document, no matter by whom requested, that would result in the Engineer having to certify, guarantee, or warrant the existence of conditions whose existence the Engineer cannot ascertain. Owner agrees not to make resolution of any dispute with the Engineer or payment of any amount due to the Engineer in any way contingent upon the Engineer signing any such document.

5.4.4 Engineer shall not at any time supervise, direct, control, or have authority over any Constructor's work, nor shall Engineer have authority over or be responsible for the means, methods, techniques, sequences, or procedures of construction selected or used by any Constructor, or the safety precautions and programs incident thereto, for security or safety at the Site, nor for any failure of a Constructor to comply with Laws and Regulations applicable to that Constructor's furnishing and performing of its work. Engineer shall not be responsible for the acts or omissions of any Constructor.

5.4.5 Engineer neither guarantees the performance of any Constructor nor assumes responsibility for any Constructor's, failure to furnish and perform the Work in accordance with the Construction Contract Documents.

5.4.6 Engineer shall not be responsible for any decision made regarding the Construction Contract Documents, or any application, interpretation, clarification, or modification of the Construction Contract Documents, other than those made by Engineer or its Consultants.

5.4.7 Engineer is not required to provide and does not have any responsibility for surety bonding or insurance-related advice, recommendations, counseling, or research, or enforcement of construction insurance or surety bonding requirements.

5.4.8 Engineer's services do not include providing legal advice or representation.

- 5.4.9 Engineer's services do not include (1) serving as a "municipal advisor" for purposes of the registration requirements of Section 975 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (2010) or the municipal advisor registration rules issued by the Securities and Exchange Commission, or (2) advising Owner, or any municipal entity or other person or entity, regarding municipal financial products or the issuance of municipal securities, including advice with respect to the structure, timing, terms, or other similar matters concerning such products or issuances.
- 5.4.10 While at the Site, Engineer, its Consultants, and their employees and representatives shall comply with the applicable requirements of Contractor's and Owner's safety programs of which Engineer has been informed in writing.

## 5.5 Termination

The obligation to provide further services under this Agreement may be terminated:

### 5.5.1 For cause,

- a. by either party upon 30 days written notice in the event of substantial failure by the other party to perform in accordance with the terms hereof through no fault of the terminating party.
- b. by Engineer:
  - 1) upon seven days written notice if Owner demands that Engineer furnish or perform services contrary to Engineer's responsibilities as a licensed professional; or
  - 2) upon seven days written notice if the Engineer's services for the Project are delayed or suspended for more than 90 days for reasons beyond Engineer's control, or as the result of the presence at the Site of undisclosed Constituents of Concern.
  - 3) Engineer shall have no liability to Owner on account of such termination.
- c. Notwithstanding the foregoing, this Agreement will not terminate for cause if the party receiving such notice begins, within seven days of receipt of such notice, to correct its substantial failure to perform and proceeds diligently to cure such failure within no more than 30 days of receipt thereof; provided, however, that if and to the extent such substantial failure cannot be reasonably cured within such 30 day period, and if such party has diligently attempted to cure the same and thereafter continues diligently to cure the same, then the cure period provided for herein shall extend up to, but in no case more than, 60 days after the date of receipt of the notice.

### 5.5.2 For convenience, by Owner effective upon Engineer's receipt of notice from Owner.

### 5.5.3 Effective Date of Termination: The terminating party under Paragraph 5.5.1 may set the effective date of termination at a time up to 30 days later than otherwise provided to allow Engineer to demobilize personnel and equipment from the Site, to complete tasks whose value would otherwise be lost, to prepare notes as to the status of completed and uncompleted tasks, and to assemble Project materials in orderly files.

### 5.5.4 Payments Upon Termination:

- a. In the event of any termination under Paragraph 5.5, Engineer will be entitled to invoice Owner and to receive full payment for all services performed or furnished in accordance with

this Agreement and all Reimbursable Expenses incurred through the effective date of termination. Upon making such payment, Owner shall have the limited right to the use of Documents, at Owner's sole risk, subject to the provisions of Paragraph 5.6.

#### 5.6 Use of Documents

- 5.6.1 All Documents are instruments of service, and ENGINEER shall retain an ownership and property interest therein (including the copyright and the right of reuse at the discretion of the ENGINEER) whether or not the Project is completed.
- 5.6.2 If Engineer is required to prepare or furnish Drawings or Specifications under this Agreement, Engineer shall deliver to Owner at least one original printed record version of such Drawings and Specifications, signed and sealed according to applicable Laws and Regulations.
- 5.6.3 Owner and Engineer may transmit, and shall accept, Project-related correspondence, Documents, text, data, drawings, information, and graphics, in electronic media or digital format, either directly, or through access to a secure Project website, in accordance with a mutually agreeable protocol. If this Agreement does not establish protocols for electronic or digital transmittals, then Owner and Engineer shall jointly develop such protocols. When transmitting items in electronic media or digital format, the transmitting party makes no representations as to long term compatibility, usability, or readability of the items resulting from the recipient's use of software application packages, operating systems, or computer hardware differing from those used in the drafting or transmittal of the items, or from those established in applicable transmittal protocols.
- 5.6.4 OWNER may make and retain copies of Documents for information and reference in connection with use on the Project by OWNER. Upon receipt of full payment due and owing for all Services, ENGINEER grants OWNER a license to use the Documents on the Project, extensions of the Project, and related uses of OWNER, subject to the following limitations: (1) OWNER acknowledges that such Documents are not intended or represented to be suitable for use on the Project unless completed by ENGINEER, or for use or reuse by OWNER or others on extensions of the Project or on any other project without written verification or adaptation by ENGINEER; (2) any such use or reuse, or any modification of the Documents, without written verification, completion, or adaptation by ENGINEER, as appropriate for the specific purpose intended, will be at OWNER's sole risk and without liability or legal exposure to ENGINEER or to ENGINEER's Consultants; (3) OWNER shall indemnify and hold harmless ENGINEER and ENGINEER's Consultants from all claims, damages, losses, and expenses, including attorneys' fees, arising out of or resulting from any use, reuse, or modification without written verification, completion, or adaptation by ENGINEER; (4) such limited license to OWNER shall not create any rights in third parties.
- 5.6.5 If ENGINEER at OWNER's request verifies or adapts the Documents for extensions of the Project or for any other project, then OWNER shall compensate ENGINEER at rates or in an amount to be agreed upon by OWNER and ENGINEER.

#### 5.7 Controlling Law

This Agreement is to be governed by the Laws and Regulations of the North Carolina, venue Catawba County.

#### 5.8 Mutual Waiver of Consequential Damages

Notwithstanding any other provision of this Agreement to the contrary, neither party including their officers, agents, servants and employees shall be liable to the other for lost profits or any special,



indirect, incidental, or consequential damages in any way arising out of this Agreement however caused under a claim of any type or nature based on any theory of liability (including, but not limited to: contract, tort, or warranty) even if the possibility of such damages has been communicated.

5.9 Limitation of Liability

In no event shall ENGINEER's total liability to OWNER and/or any of the OWNER's officers, employees, agents, contractors or subcontractors for any and all injuries, claims, losses, expenses or damages whatsoever arising out of or in any way related to this agreement from cause or causes, including, but not limited to, ENGINEER's wrongful act, omission, negligence, errors, strict liability, breach of contract, breach of warranty, express or implied, exceed the total amount of fee paid to ENGINEER under this agreement or \$50,000, whichever is greater.

5.10 Successors and Assigns

5.10.1 OWNER and ENGINEER each is hereby bound and the partners, successors, executors, administrators and legal representatives of OWNER and ENGINEER (and to the extent permitted by paragraph 5.10.2 the assigns of OWNER and ENGINEER) are hereby bound to the other party to this Agreement and to the partners, successors, executors, administrators and legal representatives (and said assigns) of such other party, in respect of all covenants, agreements and obligations of this Agreement.

5.10.2 Neither OWNER nor ENGINEER may assign, sublet or transfer any rights under or interest (including, but without limitation, moneys that may become due or moneys that are due) in this Agreement without the written consent of the other, except to the extent that any assignment, subletting or transfer is mandated by law or the effect of this limitation may be restricted by law. Unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under this Agreement.

5.10.3 Unless expressly provided otherwise in this Agreement:

- a. Nothing in this Agreement shall be construed to create, impose or give rise to any duty owed by ENGINEER to any Constructor, other person or entity, or to any surety for or employee of any of them, or give any rights in or benefits under this Agreement to anyone other than OWNER and ENGINEER.
- b. All duties and responsibilities undertaken pursuant to this Agreement will be for the sole and exclusive benefit of OWNER and ENGINEER and not for the benefit of any other party.

5.11 Notices

Any notice required under this Agreement will be in writing, addressed to the appropriate party at the address which appears on the signature page to this Agreement (as modified in writing from time to time by such party) and given personally, by registered or certified mail, return receipt requested, by facsimile, or by a nationally recognized overnight courier service. All notices shall be effective upon the date of receipt.

5.12 Severability

Any provision or part of the Agreement held to be void or unenforceable under any law or regulation shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon OWNER and ENGINEER, who agree that the Agreement shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.

5.13 Changed Conditions

If concealed or unknown conditions that affect the performance of the Services are encountered, which conditions are not ordinarily found to exist or which differ materially from those generally recognized as inherent in the Services of the character provided for under this Agreement or which could not have reasonably been anticipated, notice by the observing party shall be given promptly to the other party and, if possible, before conditions are disturbed. Upon claim by the ENGINEER, the payment and schedule shall be equitably adjusted for such concealed or unknown condition by change order or amendment to reflect additions that result from such concealed, changed, or unknown conditions.

5.14 Environmental Site Conditions

It is acknowledged by both parties that ENGINEER's scope of services does not include any services related to Constituents of Concern, as defined in Article 6. If ENGINEER or any other party encounters an undisclosed Constituent of Concern, or if investigative or remedial action, or other professional services, are necessary with respect to disclosed or undisclosed Constituents of Concern as defined in Article 6, then ENGINEER may, at its option and without liability for consequential or any other damages, suspend performance of services on the portion of the Project affected thereby until OWNER: (1) retains appropriate specialist consultant(s) or contractor(s) to identify and, as appropriate, abate, remediate, or remove the Constituents of Concern, and (2) warrants that the Site is in full compliance with applicable Laws and Regulations.

If the presence at the Site of undisclosed Constituents of Concern adversely affects the performance of ENGINEER's services under this Agreement, then the ENGINEER shall have the option of (1) accepting an equitable adjustment in its compensation or in the time of completion, or both; or (2) terminating this Agreement for cause on 30 days' notice.

OWNER acknowledges that ENGINEER is performing professional services for OWNER and that ENGINEER is not and shall not be required to become an "arranger," "operator," "generator," or "transporter" of hazardous substances, so defined in the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), as amended, which are or may be encountered at or near the Site in connection with ENGINEER's activities under this Agreement.

5.15 Insurance

ENGINEER shall maintain at all times during the term of this Agreement, at the ENGINEER's sole expense:

A. Commercial General Liability Insurance

ENGINEER shall maintain Commercial General Liability insurance, including coverage for products and completed operations liability, contractual liability, liability from independent contractors, property damage liability, bodily injury liability, and personal injury liability with limits of not less than \$2,000,000 per occurrence, and \$2,000,000 annual aggregate. The limits may be satisfied by a combination of primary and excess insurance. The coverage shall be written on an occurrence basis.

B. Business Automobile Insurance

At all times while the ENGINEER's representatives are conducting on-site work, the ENGINEER shall maintain Business Auto insurance for any owned, hired, rented, or borrowed vehicle with a limit of not less than \$2,000,000 per occurrence combined single limit for bodily injury and property damage liability. The limit may be satisfied by a combination of primary and excess insurance. The policy will also include the MCS-90 endorsement.



C. Workers Compensation & Employers Liability Insurance

At all times while the ENGINEER's representatives are conducting on-site work, ENGINEER shall maintain statutory Workers Compensation insurance in accordance with the laws of North Carolina. ENGINEER shall also maintain Employers' Liability insurance with limits of not less than \$1,000,000 per accident and \$1,000,000 each employee for injury by disease.

D. Environmental Impairment Liability Insurance

ENGINEER shall maintain Environmental Impairment Liability insurance for the transportation and disposal of pollutants handled by the ENGINEER pursuant to this Agreement. The limits of liability shall meet all State and Federal requirements, but shall not be less than \$2,000,000 each occurrence and \$2,000,000 policy aggregate. This coverage should be maintained for a period of not less than three (3) years after completion of the ENGINEER's work as set forth in this Agreement.

E. General Requirements

1. Prior to beginning the work, ENGINEER shall provide written evidence of insurance as requested by the County to confirm that these insurance requirements are satisfied.
2. Catawba County shall be named as an additional insured under ENGINEER's automobile and general liability insurance. In the event of a loss arising out of or related to the ENGINEER's services performed under this Agreement, ENGINEER's Liability insurance shall be primary (pay first) with respect to any other insurance which may be available to the County, regardless of how the "other insurance" provisions may read. Additional insured endorsements must be attached to ENGINEER's evidence of insurance and must include coverage for completed operations.
3. The workers' compensation policy must contain a waiver of subrogation in favor of the County.
4. ENGINEER shall be responsible for insuring all of its own property and equipment.
5. All insurance policies put forth to satisfy the above requirements shall require the insurer to provide a minimum of sixty (60) days' notice to the County of any material change in coverage, cancellation, or non-renewal.
6. All insurance put forth to satisfy the above requirements shall be placed with insurance companies acceptable to the County. Any deductibles or self-insured retentions in the required insurance shall be subject to approval by the County.
7. ENGINEER shall provide certificates of insurance to the County as evidence of the required coverage. ENGINEER agrees to provide complete copies of policies if requested. Failure of Contractor to provide timely evidence of insurance, or to place coverage with insurance, or to place coverage with insurance companies acceptable to the County, shall be viewed as ENGINEER's delaying performance entitling the county to all appropriate remedies under the law including termination of the contract.

5.16 Discovery

ENGINEER shall be entitled to compensation on a time and materials basis when responding to all requests for discovery relating to this Project and to extent that ENGINEER is not a party to the lawsuit.

5.17 Nondiscrimination and Affirmative Action

In connection with its performance under this Agreement, ENGINEER shall not discriminate against any employee or applicant for employment because of race, color, creed, religion, age, sex, marital status, sexual orientation or affectional preference, national origin, ancestry, citizenship, physical or mental handicap or because he or she is a disabled veteran or veteran of the Vietnam era. ENGINEER shall take affirmative action to ensure that qualified applicants are employed and that employees are treated during employment without regard to their race, color, creed, religion, age, sex, marital status, sexual orientation or affectional preference, national origin, ancestry, citizenship, physical or mental handicap or because he or she is a disabled veteran or veteran of the Vietnam era. Such actions shall include recruiting and hiring, selection for training, promotion, fixing rates or other compensation, benefits, transfers and layoff or termination.

5.18 Force Majeure

Any delays in or failure of performance by ENGINEER shall not constitute a default under this Agreement if such delays or failures of performance are caused by occurrences beyond the reasonable control of ENGINEER including but not limited to: acts of God or the public enemy; expropriation or confiscation; compliance with any order of any governmental authority; changes in law; act of war, rebellion, terrorism or sabotage or damage resulting therefrom; fires, floods, explosions, accidents, riots; strikes or other concerted acts of workmen, whether direct or indirect; delays in permitting; OWNER's failure to provide data in OWNER's possession or provide necessary comments in connection with any required reports prepared by ENGINEER, or any other causes which are beyond the reasonable control of ENGINEER. ENGINEER's scheduled completion date shall be adjusted to account for any force majeure delay and ENGINEER shall be reimbursed by OWNER for all costs incurred in connection with or arising from a force majeure event, including but not limited to those costs incurred in the exercise of reasonable diligence to avoid or mitigate a force majeure event.

5.19 Waiver

Non-enforcement of any provision by either party shall not constitute a waiver of that provision, nor shall it affect the enforceability of that provision or of the remainder of this Agreement.

5.20 Headings

The headings used in this Agreement are for general reference only and do not have special significance.

5.21 Subcontractors

ENGINEER may utilize such ENGINEER's Subcontractors as ENGINEER deems necessary to assist in the performance of its Services. ENGINEER shall obtain approval by OWNER for utilization of subcontractors and such approval shall not be unreasonably withheld.

5.22 Coordination with Other Documents

It is the intention of the parties that if the ENGINEER's Services include design then the Standard General Conditions will be used as the General Conditions for the Project and that all amendments thereof and supplements thereto will be generally consistent therewith. Except as otherwise defined herein, the terms which have an initial capital letter in this Agreement and are defined in the Standard General Conditions will be used in this Agreement as defined in the Standard General Conditions. The term "*defective*" will be used in this Agreement as defined in the Standard General Conditions.

5.23 Purchase Order

Notwithstanding anything to the contrary contained in any purchase order or in this Agreement, any purchase order issued by OWNER to ENGINEER shall be only for accounting purposes for OWNER and the pre-printed terms and conditions contained on any such purchase order are not incorporated herein, shall not apply to this Agreement, and shall be void for the purposes of the Services performed by ENGINEER under this Agreement.

5.24 Dispute Resolution

In the event of any dispute between the parties arising out of or in connection with the contract or the services or work contemplated herein; the parties agree to first make a good faith effort to resolve the dispute informally. Negotiations shall take place between the designated principals of each party. If the parties are unable to resolve the dispute through negotiation within 45 days, then either party may give written notice within 10 days thereafter that it elects to proceed with non-binding mediation. In the event that mediation is not invoked by the parties or that the mediation is unsuccessful in resolving the dispute, then either party may submit the controversy to a court of competent jurisdiction covering Catawba County, NC. The foregoing is a condition precedent to the filing of any action other than an action for injunctive relief or if a Statute of Limitations may expire.

Each party shall be responsible for its own costs and expenses including attorneys' fees and court costs incurred in the course of any dispute, mediation, or legal proceeding. The fees of the mediator and any filing fees shall be shared equally by the parties.

## **ARTICLE 6 – DEFINITIONS**

Whenever used in this Agreement the following terms have the meanings indicated which are applicable to both the singular and the plural.

6.1 Agreement

This Agreement between OWNER and ENGINEER for Professional Services including those exhibits listed referenced herein.

6.2 Constituent of Concern

Any substance, product, waste, or other material of any nature whatsoever (including, but not limited to, Asbestos, Petroleum, Radioactive Material, and PCBs) which is or becomes listed, regulated, or addressed pursuant to [a] the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §§9601 et seq. (“CERCLA”); [b] the Hazardous Materials Transportation Act, 49 U.S.C. §§1801 et seq.; [c] the Resource Conservation and Recovery Act, 42 U.S.C. §§6901 et seq. (“RCRA”); [d] the Toxic Substances Control Act, 15 U.S.C. §§2601 et seq.; [e] the Clean Water Act, 33 U.S.C. §1251 et seq.; [f] the Clean Air Act, 42 U.S.C. §§7401 et seq.; and [g] any other federal, state, or local statute, law, rule, regulation, ordinance, resolution, code, order, or decree regulating, relating to, or imposing liability or standards of conduct concerning, any hazardous, toxic, or dangerous waste, substance, or material.

6.3 Construction Cost – ♦

The total cost to OWNER of those portions of the entire Project designed or specified by ENGINEER. Construction Cost does not include ENGINEER's compensation and expenses, the cost of land, rights-of-way, or compensation for or damages to properties, or OWNER's legal, accounting, insurance counseling or auditing services, or interest and financing charges incurred in connection with the Project or the cost of other services to be provided by others to OWNER pursuant to Article 3. Construction Cost is one of the items comprising Total Project Costs.

6.4 Constructor

Any person or entity (not including the Engineer, its employees, agents, representatives, and Consultants), performing or supporting construction activities relating to the Project, including but not limited to Contractors, Subcontractors, Suppliers, Owner's work forces, utility companies, other contractors, construction managers, testing firms, shippers, and truckers, and the employees, agents, and representatives of any or all of them.

- 6.5 Contractor - ♦  
The person or entity with whom OWNER enters into a written agreement covering construction work to be performed or furnished with respect to the Project.
- 6.6 Documents  
As applicable to the Services, the data, reports, drawings, specifications, record drawings and other deliverables, whether in printed or electronic media format, provided or furnished by ENGINEER to OWNER pursuant to the terms of this Agreement.
- 6.7 ENGINEER's Subcontractor.  
A person or entity having a contract with ENGINEER to perform or furnish Services as ENGINEER's independent professional subcontractor engaged directly on the Project.
- 6.8 Reimbursable Expenses.  
The expenses incurred directly in connection with the performance or furnishing of Services for the Project for which OWNER shall pay ENGINEER as indicated in Exhibit A.
- 6.9 Resident Project Representative - ♦  
The authorized representative of ENGINEER who will be assigned to assist ENGINEER at the site during the Construction Phase. The Resident Project Representative will be ENGINEER's agent or employee and under ENGINEER's supervision. As used herein, the term Resident Project Representative includes any assistants of Resident Project Representative agreed to by OWNER. The duties and responsibilities of the Resident Project Representative are set forth in Exhibit B, "Duties, Responsibilities and Limitations of Authority of Resident Project Representative" ("Exhibit B"), attached and incorporated herein.
- 6.10 Standard General Conditions - ♦  
The Standard General Conditions of the Construction Contract (No. C-700) of the Engineers Joint Contract Documents Committee.
- 6.11 Total Project Costs - ♦  
The sum of the Construction Cost, allowances for contingencies, the total costs of design professional and related services provided by ENGINEER and (on the basis of information furnished by OWNER) allowances for such other items as charges of all other professionals and consultants, for the cost of land and rights-of-way, for compensation for or damages to properties, for interest and financing charges and for other services to be provided by others to OWNER under Article 3.
- 6.12 Work - ♦  
The entire construction or the various separately identifiable parts thereof required to be provided under the Construction Contract Documents. Work includes and is the result of performing or providing all labor, services, and documentation necessary to produce such construction, and; furnishing, installing, and incorporating all materials and equipment into such construction; and may include related services such as testing, start-up, and commissioning, all as required by the Construction Contract Documents.

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♦ This provision is applicable for projects where ENGINEER provides Design, Bidding and/or Construction Phase Services.

## ARTICLE 7 –SPECIAL PROVISIONS

Address for giving notices:  
Barry B. Edwards, P.E.  
Director  
Catawba County  
PO Box 389, Newton, NC 28658

Address for giving notices:  
CDM Smith  
4600 Park Road, Suite 240  
Charlotte, NC 28209

- 7.1 IRAN DIVESTMENT ACT CERTIFICATION: Service Provider certifies that, as of the date listed above, it is not on the Final Divestment List or the Iran Parent and Subsidiary Guidance List as created by the State Treasurer pursuant to NCGS 147-86.58. In compliance with the requirements of the Iran Divestment Act (Article 6E of Chapter 147 of the North Carolina General Statutes), Service Provider shall not utilize, in the performance of the contract, any subcontractor that is identified on the Final Divestment List or the Iran Parent and Subsidiary Guidance List.
- 7.2 E-VERIFY: Service Provider shall comply with the requirements of Article 2 of Chapter 64 of the North Carolina General Statutes. Further, if Service Provider utilizes a subcontractor, Service Provider shall require the subcontractor to comply with the requirements of Article 2 Chapter 64 of the North Carolina General Statutes.

This Agreement (consisting of Pages 1 to 31 inclusive), and the Exhibits identified above constitute the entire agreement between OWNER and ENGINEER and supersede all prior written and oral understandings. This Agreement may only be amended, supplemented, modified, or canceled by a duly executed written instrument.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement to be effective as of the date first above written.

OWNER:  
CATAWBA COUNTY

(Seal)

Attest:

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By: Randy Isenhower, Chair  
Catawba County Board of Commissioners

ENGINEER:

(Seal)

Attest:

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By: David L. Collins, P.E., Vice President  
CDM Smith, Inc.

**EXHIBIT A TO AGREEMENT  
BETWEEN  
OWNER AND ENGINEER**

**SUBTITLE D LANDFILL – Unit 3, Phase 2  
PREPARATION OF PERMIT TO CONSTRUCT APPLICATION**

**1. The Basic Services of ENGINEER as described in Section 1 of said Agreement are amended and supplemented as follows:**

The North Carolina Solid Waste Management Rules require that the permit for a Subtitle D landfill be amended every five (5) years or whenever an expansion beyond the original five-year permitted area is needed. The Blackburn Subtitle D Landfill (Permit #1803) is a permitted municipal solid waste (MSW) facility that began Unit 1 operations on January 30, 1981. The current Unit 3 Phase 1 disposal area received a Permit to Operate (PTO) on May 8, 2009 with a PTO renewal issued on March 5, 2014. The County's 2015 airspace analysis projected that the Unit 3, Phase 1 airspace would be consumed by December 2020. Waste disposal tonnages are estimated by the County to be approximately 135,000 tons this fiscal year. The Subtitle D Landfill PTO expires on May 8, 2019, and a formal request for permit review is due to North Carolina Department of Environmental Quality, Solid Waste Section (SWS) by December 8, 2018.

To account for variabilities in disposal tonnages and to provide flexibility in County capital improvement project planning and waste management scheduling, the County should plan to have Unit 3, Phase 2 available by June 2020 which provides a 6-month buffer. Assuming a 1-year SWS review period, and a twelve-month construction, CDM Smith suggests beginning work on the Permit to Construct (PTC) Application in August 2016. The tasks provided herein and associated costs for the PTC Amendment Application are for an approximate 18-acre landfill expansion (Unit 3, Phase 2).

The permit application will include:

- A hydrogeological investigation per Rule .1623.
- A facility plan per Rule .1619.
- An engineering plan per Rule .1620.
- A construction quality assurance plan per Rule .1621.
- An operation plan per Rule .1625.
- A closure/post-closure plans plan per Rule .1629.

A subsequent task order will be submitted that will cover the preparation of the construction documents and bidding services for the Unit 3, Phase 2 expansion.

**TASK 1 – PERMIT APPLICATION**

**Subtask 1.1 – Design Hydrogeologic Investigation and Report**

The hydrogeological investigation will be the first phase addressed as part of the Permit Amendment Application work. This investigation will evaluate the following items that affect landfill design: (1) depth to the uppermost aquifer; (2) description of soil overburden; (3) depth to bedrock; and, (4) characterization of other apparent hydrogeological features. As required by Rule .1623(b)(1 and 2), existing subsurface data collected during previous investigations across the entire site will be used to supplement and identify critical factors for the Unit 3, Phase 2 Design Hydrogeologic Report. The main objectives of the Geological and Hydrogeological Study will be to address the vertical separation requirements and define groundwater flow direction so that a comprehensive groundwater monitoring plan can be developed.

Based on a review of previous work completed at the site, the hydrogeology of the project area is fairly typical of Piedmont sites, with the surficial aquifer (water table) occurring in the saprolite and partially weathered rock and an underlying fractured bedrock aquifer. In the Piedmont, groundwater flow is typically a subdued reflection of surface topography and is influenced by surficial drainage features. This subsurface investigation will focus on Unit 3, Phase 2 area in order to verify or alter current perceived groundwater flow directions and construct detailed cross sections across the expansion site. This will require the installation of 14 piezometers across the area to meet the SWS objective of one boring per acre. The following subtasks outline the proposed approach to preparing the Design Hydrogeologic Report required under Rule .1623 (b) (1 and 2).

#### Prepare Boring Plan

The proposed Unit 3, Phase 2 footprint is approximately 18 acres. CDM Smith will has developed a preliminary subsurface investigation boring plan to address Rule .1623(b)(1)(A) in order to estimate costs. CDM Smith proposes to supplement data from new borings with information from previously installed borings to meet the regulatory requirements. Prior to initiating the field work, CDM Smith will meet with the SWS to review and discuss the proposed boring plan. The scope of work presented herein is based on meeting the requirements of Rule .1623(b)(1 and 2) and preliminary discussions with the SWS. Adjustments in the proposed scope of work may be necessary depending on results of discussions with the SWS and subsurface conditions encountered during the field investigation.

#### Drilling Contract Procurement

CDM Smith will contract with a drilling subcontractor to perform the work. The work to be provided by the drilling contractor will include the following items:

- Hollow-stem augering and air rotary drilling, conventional rock coring, split spoon sampling, Shelby Tube sampling, and bulk (bag) sample collection.
- Piezometer installation and development.

CDM Smith has obtained a quote from its drilling contractor based on the preliminary boring plan and estimated footages described below:

- Hollow-stem augering – 300 ft. in the landfill expansion
- Air rotary drilling - 200 ft.
- Conventional rock coring – 20 ft.
- Piezometer installation - 500 ft.

#### Subsurface Investigation

Based on the preliminary boring plan discussed above, CDM Smith has obtained a proposal from SAEDACCO, Inc. to perform air-rotary, hollow-stem auger (HSA) and rock coring work. The work to be provided by the drilling subcontractor will include the following items:

- HSA borings. It is estimated that there will be 10 HSA borings with Standard Penetration Tests (SPT) within the Unit 3, Phase 2 area totaling 300 feet. The information collected from these HSA borings will be used to identify the soil lithology, determine the depth to bedrock, and collect soil samples for geotechnical laboratory analysis. Two (2) borings will be rock cored a total of 10 feet each. Standard penetration tests and split-spoon samples will be obtained continuously from

land surface to 10-feet and at 5-foot increments thereafter in order to log the borings. Upon reaching the boring termination depth, either a piezometer will be installed if groundwater is encountered, or the borehole will be advanced into bedrock using conventional rock coring or air rotary techniques.

- Air rotary drilling. It is estimated that 4 borings within the Unit 3 Phase 2 area will be advanced using air rotary techniques totaling 200 feet. Air rotary borings will be advanced into bedrock and will target the first significant water bearing zone. It is anticipated that water will be encountered above bedrock in all borings. The air rotary borings will be installed as nested pairs in order to collect vertical gradient information and better understand the flow patterns in bedrock at the site.
- Piezometer installation and development. A total of 14 piezometers will be installed, totaling 500 feet. It is assumed that piezometers will be installed in the all borings. Following installation, each piezometer will be developed and completed with a locking, 4-inch, above grade steel protective cover. Only HSA borings and rock core holes that encountered groundwater above bedrock will be converted to piezometers. CDM Smith assumes that all HSA borings will encounter groundwater above bedrock. Piezometers will be installed using two-inch PVC casing with a minimum of five feet of machine slotted 0.010-inch screen set in a sand pack in/below the groundwater table. A bentonite seal will be placed above the slotted section in each of the wells. Three nested pair of piezometers will be installed to obtain vertical gradient information.

Groundwater measurements will be collected by CDM Smith personnel 24 hours, 1 week, monthly for 6 months after well completion. Subsequent water level readings are not included in this Amendment. It is assumed that the SWS will accept the long-term water level measurements gathered during previous investigations paired with existing long-term data from the water quality monitoring wells at the site as sufficient for establishing seasonal high water table conditions for the site. However, if the Section requires ongoing water level data beyond the period specified, CDM Smith may require additional compensation to cover the costs in providing this data.

Additional items may be required, depending on future discussions with the SWS. CDM Smith will contract directly with the driller. It is recognized that the cost for drilling services will depend upon the final boring plan approved/required by the SWS, the final cost proposals from the drilling subcontractor, and the actual amount of work that is completed in the field. The cost estimate for this task is based on the assumption that a total of 10 HSA borings, 4 air rotary borings, and 14 new piezometers will be necessary for the design hydrogeologic report and geotechnical evaluation for the Unit 3, Phase 2 expansion.

CDM Smith's on-site geologist will be responsible for determining the depth of each boring in the field. If the total depth of all borings exceeds the estimated footage described above, CDM Smith will be entitled to additional compensation at the Engineer's and subcontractor's standard rates for additional drilling and field supervision time.

The budget for this task is based on the boring plan discussed above. For this Amendment, we have made the following assumptions:

- Access, including bulldozed roads (if required) to boring locations, will be provided by the drilling subcontractor.
- One truck-mounted drill rig capable of hollow-stem-auger, rock coring, and air rotary as well as split-spoon and undisturbed sampling capabilities will be mobilized at start-up.



- All drilling and piezometer installation field work can be completed in 15, 10-hour days.
- A CDM Smith geologist/engineer will be onsite for all the drilling.
- Pump tests will not be required.

#### Laboratory Testing

Bulk and undisturbed samples will be collected for laboratory testing as required by Rule .1623(b)(1). This task assumes that 5 undisturbed and 2 bulk samples will be collected and analyzed for vertical hydraulic conductivity, porosity, standard proctor, grain size, and USCS Classification and 10 jar or bag samples will be analyzed for grain size and USCS Classification.

In addition to the hydrogeologic testing, samples for laboratory testing will be conducted during drilling for the geotechnical design. Geotechnical design laboratory testing is discussed in Task 1.4.

#### Piezometer Slug Testing

Up to 10 slug tests will be performed at selected piezometers to provide additional data on the hydraulic conductivity. Both slug-in (Falling Head) and slug-out (Rising Head) tests will be performed on the selected wells.

#### Boring Location Survey

The locations and elevation of the new piezometers and borings will have to be surveyed by a Registered Land Surveyor. CDM Smith will retain the services of its in house land surveyor to provide coordinates and elevations for each of the borings completed above. The cost associated with this work performed by the surveyor is based on the boring plan discussed above. If additional surveying services are found to be necessary, they would be handled under a separate authorization.

#### Preparation of Design Hydrogeologic Report

CDM Smith will incorporate the results of the subsurface investigation into the Design Hydrogeologic Report. The report will address the geological and hydrogeological investigation requirements of the North Carolina Solid Waste Management Rules, 15A NCAC 13B .1623 (b). The report will include a discussion of the investigation and provide the technical information necessary to determine the design of the monitoring system for the landfill in addition to; boring logs, rock core descriptions, a potentiometric contour map and long-term potentiometric contours estimates, and a bedrock contour map. The report will also include the following items as required:

#### Cross Sections

CDM Smith will prepare cross sections that identify hydrogeologic and lithologic units and characterize the vertical and horizontal components of groundwater flow.

#### Water Table Information

CDM Smith will obtain water table elevations measured at time of boring, 24 hours, 7 days, and up to 6 months for all the new borings. CDM Smith will prepare a tabulation of stabilized water table elevations for all new and existing piezometers that includes the previous and subsequent water level data collected during previous investigations. In addition, the tabulation of stabilized water table elevations for all new piezometers will be combined with the historical water table elevations from the previously installed piezometers and monitoring wells in order to develop an understanding of seasonal fluctuations in the groundwater table.

### Groundwater Occurrence and Flow

The Design Hydrogeologic Report will include a discussion summarizing the horizontal and vertical components of groundwater flow including flow directions, estimated flow rates, horizontal and vertical gradients, and groundwater recharge and discharge areas.

### Potentiometric Contour Map

CDM Smith will prepare a groundwater contour map to show the occurrence and direction of groundwater flow in the uppermost aquifer. The groundwater contours will be superimposed on a topographic map. The location of all borings and the water table elevations or potentiometric data at each location used to generate the groundwater contours will be shown on the groundwater potentiometric contour map.

### Bedrock Contour Map

CDM Smith will prepare a bedrock contour map illustrating the perceived the upper surface of the underlying bedrock. The top of bedrock will be collected during drilling and will be determined to be the elevation of auger refusal. The bedrock contour map will be superimposed on a topographic map and include the location of all borings and the top of bedrock elevations used to generate the upper surface of contours.

## **Subtask 1.2 – Facility Plan**

CDM Smith will prepare the facility plan in accordance with Rule .1619. The facility plan defines the comprehensive development of the property proposed for permitting. The facility plan includes a set of drawings and a report, which present the long-term, general design concepts related to construction, operation, and closure of the landfill. The scope and budget for this task assumes that CDM Smith will be provided with AutoCAD files for the entire Blackburn Landfill (Units 3 through 4) proposed grading plan, leachate collection system, and final closure drawings, limits of Units 1 through 4; and, volume estimates for future Unit 3 through Unit 4 phases.

### Facility Drawings

CDM Smith will prepare the following Facility Drawings as required under Rule.1619 (d):

- Site Development Sheet 1 will contain a topographical survey of the entire site representative of existing site conditions locating all property boundaries for the proposed landfill facility certified by an individual licensed to practice land surveying in the State of North Carolina. It is assumed that a suitable property survey meeting the requirements of this Rule exists from previous permitting work. The project fee does not include obtaining a new topographic survey of the existing conditions of Unit 3, Phase 2.
- Site Development Sheet 2 will contain the following:
  - Area limits of all solid waste management facilities and facility infrastructure, including landfill units and leachate facilities, and buffer requirements set forth in 15A NCAC 13B .1624 (b) (3);
  - The physical features referenced in Rule 15A NCAC 13B .1622 (Location Restrictions).
- Landfill Construction Sheet 1 will contain:
  - The limits of grading, including borrow and stockpile areas.
  - Phases of development which do not exceed approximately five years of operating capacity.
  - Proposed base grades for the entire remaining MSWLF unit(s).

- The location of access roads, sedimentation basins, and other structures related to the operation of the MSWLF unit(s).
- Landfill Construction Sheet 2 will contain the location of leachate collection, header, and force main pipeline; storage or treatment facilities; and other structures related to leachate management.
- Landfill Construction Sheet 3 will contain the locations of borrow areas for daily cover material.
- Landfill Construction Sheet 4 will contain proposed final contours for the MSWLF unit(s) and facility features for closure.
- Landfill Operation Sheet 1 will contain:
  - General grade and flow direction for the drainage layer component of the leachate collection system.
  - Size, location, and general grade for the leachate piping system including on site pipelines to leachate management facilities.
- Landfill Operation Sheets 2 - 11 will contain proposed transitional contours for existing phase(s) and construction grading for the new phase(s).
- Landfill Operation Sheet 12 will contain stormwater segregation features and detail for inactive landfill subcells.

#### Facility Report

CDM Smith will prepare the Facility Report, which includes the following as required under Rule .1619 (e):

- Chapter 1 - Waste Stream - This chapter will include a discussion of the characteristics of the waste received at the facility and facility specific management plans including:
  - The types of waste specified for disposal.
  - Average monthly disposal rates and estimated variances.
  - The area served by the facility.
  - Procedures for segregating management at different on site facilities.
  - Equipment requirements for operation of the MSWLF unit.
- Chapter 2 - Landfill Capacity - This chapter will contain an analysis of the landfill capacity and soil resources which includes volumetric estimates of:
  - Total operating capacity.
  - Operating capacity for each phase of development.
  - In-place ratio of waste to soil.
  - Available soil resources from on site or specific off site sources.
  - Required quantities of soil for landfill construction, operation, and closure.
  - The estimated operating life of all MSWLF units in years.
- Chapter 3 - Containment and Environmental Control Systems - This chapter will contain a general description of the systems designed for proper landfill operation, system components, and corresponding function.

- Chapter 4 - Leachate Management - This chapter will contain an analysis of the leachate management requirements and plans for the MSWLF facility that incorporates:
  - The performance of and design concepts for the leachate collection system within the active areas of the MSWLF unit and a description of any stormwater segregation included.
  - A definition of normal operating conditions including average monthly values for leachate generation representative of the landfill's environment and operation based on data provided by the County.
  - Leachate Management System: a description of the leachate management system components and their engineered function including:
    - Leachate pipeline operating capacity.
    - Capacity of the storage and treatment facilities.
    - Final disposal plans and applicable discharge limits, including documented prior approval of the wastewater treatment plant which may be designated in the plan.
- A contingency plan for storm surges or other considerations exceeding design parameters for the storage or treatment facilities.

As a part of the Permit to Construct Application design services, CDM Smith will review prior leachate forcemain analysis to verify the capacity of the existing forcemain to handle flow from Unit 3, Phase 2 and future Unit 3 and 4 phases.

- Chapter 5 - Special Engineering Features - Information will be provided in this chapter as needed.

#### Potential Future Borrow Area Technical Memo

CDM Smith will also prepare a Technical Memo summarizing the information gathered and provided by the County during the future borrow area investigation conducted by BLE. The purpose of the County's borrow area investigation is to identify potential future borrow areas for cover and clay liner soils. The memo will be for the County's use and will not be included in the PTC Application.

#### **Subtask 1.3 – Engineering Plan**

CDM Smith will prepare an Engineering Plan, including the engineering report and drawings, in accordance with Rule .1620 of the North Carolina Solid Waste Management Rules, for the Unit 3, Phase 2 area.

#### Engineering Report

The Engineering Report will contain the following:

- Facility Design Analysis - An analysis of the facility design that conforms to the following will be prepared:
- The standards (e.g., design calculations, material specifications, certification requirements, and construction requirements, as applicable) for the foundation and the base liner systems set forth in Rule .1624, including:
  - Base liner system description.
  - Leachate collection system design.

- Horizontal separation requirements.
  - Vertical separation requirements.
  - Survey control.
  - Location coordinates.
  - Landfill subgrade.
  - Compacted clay liner.
  - Geosynthetic clay liner.
  - Geomembrane liner.
  - Alternative liner systems.
  - Leachate collection pipes.
  - Drainage layer.
  - Filter layer criteria.
  - Special engineering structures.
  - Sedimentation and erosion control.
  - Construction quality assurance.
- The standards (e.g., design calculations, material specifications, certification requirements, and construction requirements, as applicable) for the cap system set forth in Rule .1627 (c).
  - The standards for the leachate storage facilities set forth in Rule .1680.
  - Facility Design Summary. A summary of the facility design that includes the following will be prepared:
    - A discussion of the analytical methods used to evaluate the design.
    - Definition of the critical conditions evaluated and assumptions made.
    - A list of technical references used in the evaluation.
    - Completion of any applicable location restriction demonstrations in accordance with Rule .1622. It is assumed that the existing landfill meets all of the Subtitle D Location Restrictions. This will be verified, however, if additional work is needed because the site is not in compliance with a location restriction, or the Solid Waste Section requires additional work to verify compliance, this work is not included in this Task Order.
  - Description of Materials and Construction Practices CDM Smith will prepare a description of the materials and construction practices that conforms to the requirements set forth in Rule .1624, and that is consistent with the analysis of the facility design.

#### Engineering Drawings

The Engineering Drawings will illustrate the following:

- Sheet 1 - Existing conditions, site topography, existing disposal areas, roads and buildings.
- Sheet 2 - Site development: proposed limits of excavation, subgrade elevations and boring locations.
- Sheet 3 - Borrow area plan.

- Sheet 4 - Unit 3, Phase 2 base liner system: grades for top of composite liner, slopes, anchor berm configuration, and details.
- Sheet 5 - Leachate collection system: piping system grade and inverts, cleanouts, valves, sumps, and details.
- Sheet 6 - Unit 3, Phase 2 closure plan including infiltration barrier, surface water removal, protective and vegetative cover, and details.
- Sheet 7 - Cross-sections.
- Sheet 8 - Stormwater segregation system, location and detail of features.
- Sheets 9-10 - Temporary and permanent sedimentation and erosion control plans.
- Sheet 11-15 - Miscellaneous details (as applicable).

#### **Subtask 1.4 – Geotechnical Analysis**

CDM Smith's geotechnical engineers will gather the data collected during the subsurface exploration and laboratory testing and supplement with existing information to develop a subsurface design profile for the Unit 3, Phase 2 Area. The groundwater contours for the subsurface design profile will be obtained from the Design Hydrogeologic Report. Geotechnical analyses required for the landfill design will be performed based upon the subsurface design profile and proposed Unit 3, Phase 2 geometry. Results of the analyses and recommendations will be incorporated into the landfill design and presented in a geotechnical report (included as an appendix to the Permit Application).

The following subtasks outline the proposed approach to the geotechnical analyses:

##### *Geotechnical Exploration*

Up to 14 geotechnical borings will be drilled during the subsurface exploration program as described in subtask 1.1. The geotechnical borings will be observed and logged by a CDM Smith's geotechnical engineer or geologist. All geotechnical borings drilled by hollow-stem augering will be sampled by split spoon using SPT method, continuously from the ground surface to 10 feet below grade and at five-foot intervals thereafter. Up to 7 undisturbed samples of cohesive soils will be collected as directed by CDM Smith's geotechnical engineer. Upon completion all geotechnical test borings will be converted to piezometer wells.

##### *Geotechnical Laboratory Testing*

Laboratory Testing will be conducted on selected samples and will consist of the following:

- Eight (8) grain-size analyses (ASTM D422).
- Ten (10) grain-size analyses (ASTM D422).
- Ten (10) fines content (ASTM D1140).
- Twenty (20) moisture contents (ASTM D2216).
- Ten (10) Atterberg Limits (ASTM D4318).

- Two (2) One-dimensional Consolidation tests (ASTM D2435).
- Five (5) Permeability tests on undisturbed samples (ASTM D5084).
- Two (2) Permeability tests on remolded samples (ASTM D2435).

#### Geotechnical Analyses

Based upon the subsurface exploration, laboratory testing, and existing data from the landfill site, CDM Smith will develop a subsurface design profile defining the engineering properties and thicknesses of the various soil layers underlying the Unit 3, Phase 2 Area. This design profile and the proposed Unit 3, Phase 2 geometry will be used to perform the following geotechnical analyses:

- Total and differential settlement analyses.
- Slope stability analyses (including both Global Stability and Veneer Stability).

#### Geotechnical Report

CDM Smith will prepare a geotechnical report presenting the data gathered during the subsurface exploration and laboratory testing and the results of the geotechnical analyses. The report will also contain recommendations for the design and construction of the proposed landfill expansion.

### **Subtask 1.5 - Monitoring Plans**

#### Water Quality Monitoring Plan

CDM Smith will prepare the Water Quality Monitoring Plan for the Blackburn Landfill to account for the proposed Unit 3, Phase 2 expansion in accordance with Rule .1623. Costs for this work does not include installation, sampling, or reporting for any additional groundwater monitoring wells associated with the Unit 3, Phase 2 expansion.

#### Landfill Gas Monitoring Plan

CDM Smith will prepare the Landfill Gas Monitoring Plan for the Blackburn Landfill to account for the proposed Unit 3, Phase 2 expansion in accordance with Rule .1626(4). Costs for this work does not include installation, sampling, or reporting for any additional landfill gas monitoring wells associated with the Unit 3, Phase 2 expansion.

### **Subtask 1.6 - Construction Quality Assurance (CQA) Plan**

CDM Smith will prepare the CQA plan in accordance with Rule .1621. The CQA plan will describe the observation and tests that will be used before, during, and upon completion of construction. The CQA plan will address the construction materials design specifications, and the construction and certification requirements set forth in Rule .1624. The CQA plan will also describe the procedures that will be required to maintain the integrity of the landfill systems prior to waste placement. It should be noted that this Task Order does not include implementation of the CQA plan during construction or the preparation of certification documents after construction in support of the request for a Permit to Operate. These services will be included in a future Task Order covering service during construction. The CQA plan will include the following:

- Responsibilities and authorities for the construction management organization and a list of topics to be covered at the pre-construction meeting including a discussion of the construction

management organization, respective duties during construction, and periodic reporting requirements for test results and construction activities.

- Description of all field observations, tests, equipment, calibration procedures for field testing equipment that will be used to verify that the construction and installation meets or exceeds all design criteria established in Rules .1620 and .1624.
- Description of all sampling protocols, sample size, methods for determining sample locations and frequency of sampling.
- An outline of the CQA activities report as required for the Permit to Operate Application. Progress and troubleshooting meetings, daily and monthly, will be addressed in the plan and the contents of the meeting documented.

### **Subtask 1.7 - Operations Plan**

CDM Smith will prepare the Operations Plan, which contains applicable drawings and a report that presents the information required in Section .1625 of the North Carolina Solid Waste Management Rules. This task assumes that the Operations Plan prepared and approved as part of the Unit 3, Phase 2 Permit Amendment has not significantly changed. If significant operational changes have occurred since the previous permit, requiring significant modifications to said plan, CDM Smith may be entitled to additional compensation.

#### Operational Drawings

The operations plan will contain the following drawings /sheets (assumes 12 drawings):

- General grade for the leachate drainage component and leachate piping system.
- Annual progression of operation, transition contours, final contours, and leachate and stormwater controls for Unit 3, Phase 2.

#### Operational Report

CDM Smith will prepare a narrative discussion of the operational drawings and complete a description of the facility operation that conforms to the requirements of Rule .1625 (2) and .1626. The following will be completed and incorporated into the operational report. This section assumes that the general operations of the landfill have not significantly changed since the submission and acceptance of the Unit 3, Phase 2 permit.

- General Landfill Operating Procedures.
- Waste Acceptance and Disposal Requirements - Any changes to the waste screening plan will be made in compliance with Rule .1626 of the North Carolina Solid Waste Management Rules.
- Cover Material Requirements.
- Disease Vector Control.
- Air Criteria Compliance.
- Access and Safety Requirements.
- Erosion and Sedimentation Control.



- Drainage Control and Water Protection.
- Liquid Restrictions.
- Record Keeping Requirements.
- Spreading and Compacting Requirements.
- Leachate Management Plan - The following items will be addressed:
  - Periodic maintenance of the leachate collection system.
  - Leachate generation records.
  - Leachate quality sampling.
  - Leachate disposal approvals.
  - Contingency planning for extreme operational conditions.

### **Subtask 1.8 – Closure/Post-Closure Plans**

#### Closure Plan

Rule .1617 (a)(1)(E) requires submittal of a closure plan prepared in accordance with Rule .1629. Under this task, CDM Smith will prepare the Closure Plan. The closure plan will describe the steps necessary to close all constructed MSWLF units at any point during the active life in accordance with the cap requirements in Rule .1627 (c). The closure plan will also address the following:

- A description of the cap system and the methods and procedures to be used to install the cap in accordance with Rule .1627 (c).
- An estimate of the largest of the MSWLF unit ever requiring the specified cap system at any time during the active life that is consistent with the drawings in the engineering plan or the facility plan.
- An estimate of the maximum inventory of wastes ever on-site over the active life of the landfill facility.
- A schedule for completing all activities necessary to satisfy the closure criteria set forth in Rule .1627 (c).
- A written cost estimate, in current dollars, of the cost of hiring a third party to close the largest area of all MSWLF units at any time during the active life, as required under Rule .1628.

It will be the responsibility of Catawba County to provide all necessary financial assurance instruments for closure as required under Rule .1628.

#### Post-Closure Plan

Rule .1617 (a)(1)(E) requires submittal of a post-closure plan prepared in accordance with Rule .1629. Under this task, CDM Smith will prepare the post-closure plan for Unit 3, Phase 2. The post-closure plan will address the following:

- A description of the monitoring and maintenance activities required in Rule .1627 (d) for each MSWLF unit, and the frequency at which these activities will be performed.
- Name, address, and telephone number of the person or office to contact about the facility during the post-closure period.
- A description of the planned uses of the property during the post-closure period.
- A written cost estimate, in current dollars, of the cost of hiring a third party to conduct post-closure care for the MSWLF unit, as required under Rule .1628.

#### **Subtask 1.9 – Permit Application Preparation and Response**

CDM Smith will assemble two complete permit documents for the Catawba County Unit 3, Phase 2 Permit to Construct Application for submission to SWS, which will include the report and plan sections as defined in the above tasks. As part of this task, CDM Smith will prepare and submit responses to any review comments received by the County from SWS in effort to provide the County with an approved Permit to Construct. CDM Smith's budget for responding to SWS comments assumes one round of SWS comments with a level of effort equal to 60 hours. Multiple rounds of comments may require additional compensation.

#### **TASK 2 – TECHNICAL REVIEW MEETINGS AND OPINION OF PROBABLE CONSTRUCTION COST**

CDM Smith will hold internal Technical Review Committee (TRC) meetings at 30% and 60% completion level. CDM Smith will also conduct on-site client review meetings at the same milestones.

CDM Smith, using our construction branch, CDM Constructors Inc. (CCI), will prepare and submit one opinion of probable construction cost (OPCC) to the County at permit application level for budgeting purposes.

#### **TASK 3 – ADDITIONAL PERMITTING REQUIREMENTS**

##### **Subtask 3.1 – Erosion and Sedimentation Control Permit Application**

CDM Smith will prepare an Erosion and Sedimentation Control Permit Application with design plans and supporting calculations for County submittal to NCDEQ Land Quality Section. It is assumed the erosion and sedimentation control permit application review fee for land disturbance will be remitted by the County. CDM Smith's budget for this task assumes one round of review comment responses.

#### **2. The responsibility of OWNER as described in Section 2 of said Agreement are amended and supplemented as follows:**

- Provide previous AutoCAD files for the entire Blackburn Landfill (Units 3 through 4) proposed grading plan, leachate collection system, and final closure drawings
- Review deliverables in a timely manner.
- Provide requested historical landfill operation information.
- Pay permitting and other fees that may arise from the work.

#### **3. The time period for the performance of ENGINEER's services as set forth in Section 4 of said Agreement are amended as follows:**

Engineer shall complete Tasks 1-3 within 30 months.

**4. The method of payment for services rendered by ENGINEER shall be as set forth below:**

For the Basic Services performed by ENGINEER, OWNER agrees to pay ENGINEER a not-to-exceed fee of **\$339,800** for services provided under this Task Order.

A breakdown of the not-to-exceed fee is provided below. Monthly payments shall be made in accordance with the amount of work completed and invoiced on a monthly basis. The not-to-exceed fee will be billed according to the agreed upon July 2016 billing rate ranges. Subcontracted services will be invoiced based on cost.

	<b>CDM Smith</b>	<b>Subcontractor</b>
Design Hydrogeologic Investigation and Reporting (Task 1.1)	\$65,900	\$49,600
Facility and Engineering Plans (Tasks 1.2-1.4)	\$124,800	\$5,300
Monitoring Plans (Tasks 1.5)	\$8,900	--
CQA, Operation, & Closure/Post closure Plans (Tasks 1.6-1.8)	\$26,200	--
Permit Application Preparation and Response (Task 1.9)	\$15,100	--
Technical Review Meetings and Construction Estimate (Task 2)	\$27,500	\$6,500
Additional Permitting Requirements (Task 3)	\$10,000	--
<b>Total</b>	<b>\$ 278,400</b>	<b>\$ 61,400</b>

**EXHIBIT B TO AGREEMENT  
BETWEEN  
OWNER AND ENGINEER**

**DUTIES, RESPONSIBILITIES AND LIMITATIONS OF AUTHORITY  
OF THE RESIDENT PROJECT REPRESENTATIVE**

This is an Exhibit attached to, made a part of and incorporated by reference with the Agreement made on \_\_\_\_\_, 20\_\_\_\_ between \_\_\_\_\_ (OWNER) and \_\_\_\_\_ (ENGINEER) for providing professional services.

ENGINEER shall furnish a Resident Project Representative ("RPR"), assistants and other field staff to assist ENGINEER in observing progress and quality of the work of Contractor.

Through more extensive on-site observations of the work in progress and field checks of materials and equipment by the RPR and assistants, ENGINEER shall endeavor to provide further protection for OWNER against defects and deficiencies in the work of Contractor. However, ENGINEER shall not, as a result of such observations of Contractor's work, supervise, direct, or have control over any Constructor's work nor shall ENGINEER have authority over or responsibility for the means, methods, techniques, sequences or procedures selected by any Constructor, for safety precautions and programs incident to the work of any Constructor, for any failure of any Constructor to comply with laws, rules, regulations, ordinances, codes or orders applicable to performing and furnishing the work, or responsibility of construction for Contractor's failure to furnish and perform the Work in accordance with the Construction Contract Documents.

The duties and responsibilities of the RPR are limited to those of ENGINEER in ENGINEER's Agreement with the OWNER and in the construction Contract Documents, and are further limited and described as follows:

**A. General**

RPR is ENGINEER's agent at the site, will act as directed by and under the supervision of ENGINEER, and will confer with ENGINEER regarding RPR's actions. RPR's dealings in matters pertaining to the on-site work shall in general be with ENGINEER and Contractor, keeping OWNER advised as necessary. RPR's dealings with subcontractors shall only be through or with the full knowledge and approval of Contractor. RPR shall generally communicate with OWNER with the knowledge of and under the direction of ENGINEER.

**B. Duties and Responsibilities of RPR**

1. *Schedules:* Review the progress schedule, schedule of Shop Drawing submittals schedule of values, and other schedules prepared by Contractor and consult with ENGINEER concerning their acceptability.
2. *Conferences and Meetings:* Attend meetings with Contractor, such as preconstruction conferences, progress meetings, job conferences and other project-related meetings (but not Contractor's safety meetings), and as appropriate prepare and circulate copies of minutes thereof.
3. *Safety Compliance:* Comply with Site safety programs, as they apply to RPR, and if required to do so by such safety programs, receive safety training specifically related to RPR's own personal safety while at the Site.

4. *Liaison:*

- a. Serve as ENGINEER's liaison with Contractor, working principally through Contractor's superintendent and assist in understanding the intent of the Construction Contract Documents; and assist ENGINEER in serving as OWNER's liaison with Contractor when Contractor's operations affect OWNER's on-site operations.
- b. Assist in obtaining from OWNER additional details or information, when required for proper execution of the Work.

5. *Shop Drawings and Samples:*

- a. Record date of receipt of Shop Drawings and Samples.
- b. Receive Samples that are furnished at the site by Contractor, and notify ENGINEER of availability of Samples for examination.
- c. Advise ENGINEER and Contractor of the commencement of any Work requiring a Shop Drawing or Sample if the submittal has not been approved by ENGINEER.

6. *Review of Work, Defective Work, Inspections, Tests and Start-ups:*

- a. Report to ENGINEER whenever RPR believes that any part of the Work is defective under the terms and standards set forth in the Construction Contract Documents, and provide recommendations as to whether such Work should be corrected, removed and replaced, or accepted as provided in the Construction Contract Documents.
- b. Inform ENGINEER of any Work that RPR believes is not defective under the terms and standards set forth in the Construction Contract Documents, but is nonetheless not compatible with the design concept of the completed Project as a functioning whole, and provide recommendations to Engineer for addressing such Work.
- c. Advise Engineer of that part of the Work that RPR believes should be uncovered for observation, or requires special testing, inspection, or approval.
- d. Consult with Engineer in advance of scheduled inspections, tests, and systems start-ups.
- e. Verify that tests, equipment and systems start-ups and operating and maintenance training are conducted in the presence of appropriate personnel, and that Contractor maintains adequate records thereof; and observe, record and report to ENGINEER appropriate details relative to the test procedures and start-ups.
- f. Accompany visiting inspectors representing public or other agencies having jurisdiction over the work, record the results of these inspections and report to ENGINEER.

7. *Interpretation of Contract Documents:* Report to ENGINEER when clarifications and interpretations of the Contract Documents are needed and transmit to Contractor clarifications and interpretations as issued by ENGINEER.

8. *Modifications:* Consider and evaluate Contractor's suggestions for modifications in Drawings or Specifications and report with RPR's recommendations to ENGINEER. Transmit to Contractor in writing decisions as issued by ENGINEER.

9. *Records:*

- a. Maintain at the job site orderly files for correspondence, reports of job conferences, Shop Drawings and Samples, copies of Construction Contract Documents including all Work Change, Addenda, Change Orders, Field Orders, additional Drawings issued subsequent to the execution of the Construction Contract, RFIs, ENGINEER's clarifications and interpretations of the Contract Documents, progress reports, approved Shop Drawing submittals and other Project-related documents.
- b. Prepare a daily report or keep a diary or log book, recording Contractor's hours on the job site, Subcontractors present at the Site weather conditions, data relative to questions of Work Change Directives, Change Orders or changed conditions, list of job site visitors, deliveries of equipment or materials, daily activities, decisions, observations in general, and specific observations in more detail as in the case of observing test procedures; and send copies to ENGINEER.
- c. Record names, addresses, e-mail addresses, websites and telephone numbers of all Contractors, Subcontractors and major suppliers of materials and equipment.

10. *Reports:*

- a. Furnish to ENGINEER periodic reports as required of progress of the Work and of Contractor's compliance with the progress schedule and schedule of Shop Drawing and Sample submittals.
- b. Consult with ENGINEER in advance of scheduled major tests, inspections or start of important phases of the Work.
- c. Draft proposed Change Orders and Work Change Directives, obtaining backup material from Contractor and recommend to ENGINEER Change Orders, Work Change Directives, and Field Orders.
- d. Report immediately to ENGINEER and OWNER the occurrence of any accident.

11. *Payment Requests:* Review Applications for Payment with Contractor for compliance with the established procedure for their submission and forward with recommendations to ENGINEER, noting particularly the relationship of the payment requested to the schedule of values, Work completed and materials and equipment delivered at the site but not incorporated in the Work.

12. *Certificates, Maintenance and Operation Manuals:* During the course of the Work, verify that certificates, maintenance and operation manuals and other data required to be assembled and furnished by Contractor are applicable to the items actually installed and in accordance with the Contract Documents, and have this material delivered to ENGINEER for review and forwarding to OWNER prior to final payment for the Work.

13. *Completion:*

- a. Before ENGINEER issues a Certificate of Substantial Completion, submit to Contractor a list of observed items requiring completion or correction.
- b. Observe whether Contractor has had performed inspections required by laws, rules, regulations, ordinances, codes, or orders applicable to the work, including but not limited to those to be performed by public agencies having jurisdiction over the work.
- c. Conduct a final inspection in the company of ENGINEER, OWNER and Contractor and prepare a final list of items to be completed or corrected.

- d. Observe whether all items on final list have been completed or corrected and make recommendations to ENGINEER concerning acceptance and issuance of the Notice of Acceptability of the Work.

**C. Limitations of Authority by RPR**

Resident Project Representative:

1. Shall not authorize any deviation from the Construction Contract Documents or substitution of materials or equipment (including "or-equal" items).
2. Shall not exceed limitations of ENGINEER's authority as set forth in the Agreement or the Contract Documents.
3. Shall not undertake any of the responsibilities of Contractor, Subcontractors, Suppliers, or any Constructor.
4. Shall not advise on, issue directions relative to or assume control over any aspect of the means, methods, techniques, sequences or procedures of construction unless such advice or directions are specifically required by the Contract Documents.
5. Shall not advise on, issue directions regarding or assume control over safety precautions and programs in connection with the Work.
6. Shall not accept Shop Drawing or Sample submittals from anyone other than Contractor.
7. Shall not authorize OWNER to occupy the Project in whole or in part.
8. Shall not participate in specialized field or laboratory tests or inspections conducted by others except as specifically authorized by ENGINEER.

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

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

\_\_\_\_\_  
Bob Miracle, Chief Financial Officer

**APPROVED AS TO FORM:**

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

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