

## MINUTES

**STATE OF NORTH CAROLINA  
COUNTY OF HENDERSON**

**BOARD OF COMMISSIONERS  
MONDAY, FEBRUARY 6, 2012**

The Henderson County Board of Commissioners met for a regularly scheduled meeting at 5:30 p.m. in the Commissioners' Meeting Room of the Historic Courthouse on Main Street, Hendersonville.

Those present were: Chairman Tommy Thompson, Vice-Chairman Bill O'Connor, Commissioner Larry Young, Commissioner Charlie Messer, Commissioner Michael Edney, County Manager Steve Wyatt, Interim Assistant County Manager David Whitson, Attorney Russ Burrell and Clerk to the Board Teresa Wilson.

Also present were: Public Information Officer Christy DeStefano, Finance Director J. Carey McLelland, Planning Director Anthony Starr, Engineer Marcus Jones, Research/Budget Analyst Amy Brantley, Chief Deputy Greg Cochran, Delinquent Tax Collector Lee King, Planner Parker Sloan, Captain of Patrol Tim Griffin, Code Enforcement Director Toby Linville and David Pearce (as security).

### CALL TO ORDER/WELCOME

Chairman Thompson called the meeting to order and welcomed all in attendance.

### PLEDGE OF ALLEGIANCE

The Pledge of Allegiance to the American Flag was led by Chloe Mathis of the Barnyard Bandits 4-H Club.

### INVOCATION

County Manager Steve Wyatt gave the invocation.

### BLUE RIDGE COMMUNITY HEALTH PRESENTATION

Jennifer Henderson, CEO of Blue Ridge Community Health thanked the Board for their assistance in the new medical facility. She provided the following information:

- The Comprehensive family medical care for all ages, including treatment of acute illnesses and minor injuries, management of chronic diseases, complete physical exams, minor office procedures, women's health services. (10 physicians/advanced practice)
- Comprehensive pediatric care from birth to late adolescence, including school physicals, treatment of both acute and minor illnesses, management of chronic diseases, well-child/preventive care exams, immunizations. (2 physicians)
- Dental care for both adults and children, including basic restorative services, periodontal care, diagnostic, preventive cleanings, paid relief, extractions, and emergency dental services (4 dentists, 3 hygienists)
- A complete range of behavioral health care, including psychiatry & addiction medicine, general and addiction counseling. Provide treatment and services for issues including depression, anxiety & panic disorders, substance abuse, anger, family violence, parenting concerns, pain management, and eating disorders. (1.5 psychiatry/addiction medicine, 4 counseling)
- The School Health Program promotes overall health and well-being, so students stay healthy, which improves attendance and performance at school. Services include school-based health centers in 4 schools, providing primary & preventive health care services, behavioral health, and nutrition services for clinic schools as well as "linked" schools. (1 physician, 2 advanced practice)
- Adult and Pediatric Nutrition Counseling (1 Dietitian)
- Prenatal and Perinatal Services (3 FP Physicians)
- Laboratory & Radiology (Pardee)

DATE APPROVED: February 15, 2012

- 340B Pharmacy & medication assistance programs
- Health Education, Outreach, Support Services including medical outreach, translation/interpretive services, community education, patient education, food bank, eligibility assistance, and transportation
- BRCHS 2011 Quick Facts
  - 17,538 individuals received services
  - 10,915 patients were uninsured
  - 98% live below 200% of poverty
  - 67,440 patient encounters
  - \$5 million services provided free as “charity care”
  - 2,000+ children were provided services in school based health centers

### **PUBLIC HEARINGS**

#### **Public Hearing for the Closeout of the Warm Company CDBG Project (Grant No. 08C-1848)**

Parker Sloan stated Henderson County received a \$200,000 grant to extend sewer service to the Warm Company located at 581 Old Sunset Hill Road. The project constructed approximately 1,500 feet of sewer line to allow for the 45,000 square foot expansion of the Warm Company building doubling the previous size. The total project cost was \$142,703.36

Before the final paperwork can be submitted to the N.C. Department of Commerce, Division of Community Investment & Assistance, Henderson County is required to hold a closeout public hearing to receive public comments concerning the grant. No County matching funds were required for this project.

John Connell of the Land-of-Sky Regional Council noted that the size of the facility has doubled allowing for the addition of eight (8) jobs and the retention of twenty (20) jobs.

#### **Public Input**

There was none.

#### **Public Hearing to receive citizen input on the 2011 and 2012 Community Development Block Grant Application(s)**

Anthony Starr stated the Division of Community Investment and Assistance (CI) is opening the 2011 and 2012 grant cycles for Community Development Block Grant Programs (CDBG). Two hearings are required prior to submitting an application to CI. This first hearing is generic and covers all of the categories of CDBG grants offered by CI. The second hearing, to be held later, will be for the specific purpose of taking public comments on the specific grant application. The public will be notified of the qualifications for assistance and will be invited to apply. These funds are provided by the U.S. Department of Housing and Urban Development (HUD) through its Community Development Block Grant program to each state. Five different grant programs are available for consideration.

**Scattered Site Housing:** Grants are available to address the housing needs of very low income families throughout the County. Subject to funding availability, the County can receive between \$250,000 to \$400,000 for the purposes of rehabilitation, relocation, or reconstruction of qualified homeowner occupied housing units.

**Infrastructure Program:** This program aims to improve neighborhood infrastructure with the installation of new public sewer or water lines, repairing existing lines, or improvements to water or sewer treatment plants. Location of project must benefit low and moderate income persons. Maximum grant amount is \$750,000 and there is a required 5% local match.

**Small Business and Entrepreneurial Assistance:** This program is selected on a competitive basis to assist the small business community. \$150,000 to \$250,000 is awarded to support eligible job creation activities such as the purchase of land, infrastructure improvements, or construction improvements. Eligible activities

must be tied to the creation of at least six jobs.

**Infrastructure Hook-Up Program:** This program aims to assist low income families with connection of water or sewer infrastructure. Possible assistance also includes waterline repair, and removal of septic tanks or cap wells. Maximum possible grant award is \$75,000.

**NC Catalyst Program:** This is a new program that that consolidates several activities such as housing development and community revitalization. Activities include construction of public facilities, investment in multi-family rental developments, single family housing development, and slum and blight removal. Minimum grant amounts depend on desired activity with a maximum grant of \$500,000.

**Public Input**

There was none.

**STATEMENT BY THE CHAIRMAN IN REGARD TO SHERIFF RICK DAVIS**

Chairman Thompson stated verification was received that Sheriff Rick Davis has submitted his medical retirement, and has been approved. Attorney Russ Burrell had prepared a letter to Henderson County Republican Party Chairman Mike Scruggs. A copy of the letter is hereby attached and incorporated as part of these minutes. Chairman Thompson read the letter.

*Commissioner Young made the motion that the Board authorizes the Chairman to sign the letter addressed to the Republican Party Chairman Mike Scruggs, to be delivered promptly. All voted in favor and the motion carried.*

**INFORMAL PUBLIC COMMENT**

- 1) Dr. Linda Sokalski – Dr. Sokalski spoke in regard to Pardee Hospital. She is a former member of the Hospital Corporation Board of Directors and will continue to advocate for the citizens. Dr. Sokalski provided two handouts and stated that Pardee ranks last in patient satisfaction.
- 2) Tom Hill – Mr. Hill spoke in regard to the Sheriff. He is happy to hear that the position is vacant but feels the Board should continue with their investigation. He encouraged the Board to fill the position outside of the Sheriff’s office.

**DISCUSSION/ADJUSTMENT OF AGENDA**

Commissioner Edney requested that Discussion Item F – AMENDMENT TO THE HENDERSON COUNTY HOSPITAL CORPORATION ARTICLES OF INCORPORATION be removed from the agenda. Chairman Thompson requested the addition of a Discussion Item – SCHOOL BOARD RESPONSE TO ¼ CENT SALES TAX REFEREDUM as the first discussion item.

*Commissioner O’Connor made the motion to adopt the Agenda with revisions as noted. All voted in favor and the motion carried.*

**CONSENT AGENDA**

*Commissioner Messer made the motion to adopt the Consent Agenda as presented. All voted in favor and the motion carried.*

CONSENT AGENDA consisted of the following:

**Minutes**

Draft minutes were presented for board review and approval of the following meeting(s):

January 18, 2012 – regularly scheduled meeting

**Tax Collector’s Report**

Deputy Tax Collector Carol McCraw had presented the Tax Collector’s Report to the Commissioners dated February 1, 2012 for information only. No action was required.

**Financial Report/Cash Balance Report – December 2011**

The December 2011 County Financial Report/Cash Balance Report was provided for the Board's review and approval.

The following are explanations for departments/programs with higher budget to actual percentages for the month of December:

- Administrative Services – payout of former employee's final pay during the 1<sup>st</sup> quarter
- Tax Collector – interest payment required to be paid on property tax appeals paid in December
- Criminal Justice Partnership Program – 100 percent grant funded program
- Rescue Squad – 3<sup>rd</sup> quarter non-profit contribution payment
- Property Addressing – actual salary costs running slightly ahead of budget

The YTD deficit in the Capital Reserve Fund is the balance remaining from the original \$750,000 approved and allocated by the Board for Recreation Park Projects from fund balance in this Fund.

The YTD deficit in the Emergency Telephone System (911) Fund is due to the payment of annual debt service (\$106,235.53) on financing for the 911 system upgrade. This deficit will correct itself by the end of the fiscal year.

The YTD deficit in the Public Transit Fund is due to the timing difference between operating expenditures and the subsequent reimbursement of federal transit funds from the City of Asheville. There is also fund balance of \$104,040 appropriated to cover operating expenditures for FY2012.

The YTD deficit in the Immigration and Customs Enforcement (ICE) Fund is due to project expenditures for the new ICE vehicle storage building, new vehicles and the purchase of equipment. Most of these expenditures have been covered through the appropriation of fund balance available in the ICE Fund. Also, due to a timing delay in receiving payments, federal ICE revenues for December will not be received and posted until February 2012.

The YTD deficit in the CDBG – Scattered Site Housing Project Fund, the CDBG – Warm Company Project Fund, the CDBG – Talley Drive Project Fund and the Mud Creek Grant Project Fund is due to the timing difference between the expenditure of grant funds and subsequent reimbursement from the state.

Motion:

*I move that the Board of Commissioners approves the December 2011 County Financial Report and Cash Balance Report as presented.*

**Henderson County Public Schools Financial Reports – December 2011**

The Henderson County Public Schools December 2011 Financial Reports were provided for the Board's information.

Motion:

*I move that the Board of Commissioners approves the Henderson County Public Schools December 2011 Financial Reports as presented.*

**Cooperative Extension MOU Revisions**

The County has received a request from the North Carolina Cooperative Extension Service (NC CES), to amend the current Memorandum of Understanding (MOU). Currently, the MOU specifies ten (10) positions, with the County being responsible for varying portions of each position's total salary and benefit costs. The proposal from NC CES would transfer the nursery crops position to Buncombe County, currently being reimbursed by the County at 29%, thus eliminating that position. Further, the proposal would fill Henderson

County's consumer horticulture position as a split Commercial Horticulture (Nursery)/Consumer Horticulture position, which would continue to be reimbursed by the County at 49%.

Marvin Owings, Extension Director of Henderson County, has stated that no loss of service to Henderson County residents would result from this amendment. Additionally, Staff estimates adopting the proposed changes would result in a financial savings to the County of \$17,819.

Motion:

*I move that the Board adopts the revised MOU as presented, and authorizes the Chairman to execute the amended MOU. All voted in favor and the motion carried.*

### **Probation and Parole Lease**

A "no cost" lease agreement with the State of North Carolina was provided for review. The lease would cover a period of three years beginning January 2012 and ending on December 31, 2014 to house the Probation and Parole offices at 1347 Spartanburg Highway, the new Court Services Building. The lease agreement is very similar to others across the state and does not obligate the County for any more than what the County already provides. The State of North Carolina requires that Counties provide space for Probation and Parole functions, and the lease agreement is provided to protect the rights of both the County and the State of North Carolina. With this lease the County retains the right to move the Probation and Parole offices with adequate (60 days) notice.

Motion:

*I move that the Board approves the lease provided in the agenda packet between Henderson County and the State of North Carolina and authorize the County Manager to sign the lease on behalf of Henderson County.*

### **Resolution supporting Sierra Nevada Brewing Co. NCDOT involvement**

A proposed resolution supporting the Sierra Nevada Brewing Co. project in Mills River, and NCDOT involvement was included in the agenda packet. Consideration of the resolution was not undertaken prior to this meeting due to the desire of the company for secrecy until it made its decision.

Motion:

*I move that the Board adopts the resolution provided in the agenda packet.*

### **Sierra Nevada Brewing Co. Incentives agreement**

At the conclusion of the Board's public hearing on this matter (then referred to as "Project 300"), the Board voted to offer a grant of economic incentives in this matter "in a maximum amount of "\$3,750,000.00", directed staff to negotiate a proposed agreement, and to bring the proposed agreement back before the Board.

Provided was a proposed agreement, already executed by Sierra Nevada Brewing Co., and also by its local affiliate, Wild River Corp. In it:

- 1) The County agrees to pay incentives to Wild River Corp. in the total amount of \$2,713,362.00, over a fixed schedule (set out in the agreement) through December, 2017.
- 2) Wild River Corp, will purchase certain land upon which it holds an option, located in Henderson County.
- 3) Sierra Nevada Brewing Co. will construct and equip a new plant (and also a transshipment site) on the property acquired by Wild River Corp., with total investment (not including cost of land) of \$30,000,000.00 in buildings and other real estate improvements, and \$77,500,000.00 in equipment and other personal property improvements, and will create not fewer than ninety-three (93) new jobs.

Motion:

*I move that the Board adopts the proposed agreement included in the agenda packet.*

**Scattered Site Housing CDBG Selection Committee**

As part of our scattered site housing rehabilitation program, Henderson County is required to form a Selection Committee to assist in developing policies and procedures for the program and to review applications for assistance. Selection Committee responsibilities include:

- Receive and review applicant information to determine the eligibility and ranking of those applicants.
- Submit a list of eligible applicants and alternates to the County Commissioners for their inclusion in the 2011 application.
- Serve as informal public contacts to provide information about the Scattered Site Housing program and any other available County program that will assist low and moderate-income homeowners in need of housing rehabilitation.

The Selection Committee will meet throughout the application period, and thereafter on an as needed basis. In the past our committee was comprised of the staff of the municipalities in Henderson County, a representative from the Housing Assistance Corp., and a representative from Habitat for Humanity of Henderson County. Along that same vein, this cycle we are recommending that the following individuals, or their representatives, be appointed by the Board to serve on the Selection Committee.

<u>NAMES</u>	<u>POSITION</u>	<u>ENTITY</u>
Anthony Starr	Planning Director	Henderson County
Patrick Kennedy	Executive Director	Habitat for Humanity of Henderson County
Terri Swann	Code Enforcement	City of Hendersonville
Eric Rufa	Planning Director	Town of Fletcher
Jaime Laughter	Town Manager	Town of Mills River
Judy Boleman	Zoning Administrator	Village of Flat Rock
Jim Ball	Town Manager	Town of Laurel Park

The committee bylaws were also provided as previously approved by the Board in 2005.

The County also used outside firms to administer this grant program for prior grant cycles. The grant program provides funds to hire a firm to manage the grant. No local funds are required for the grant administration.

Motion:

*I move the Board approves the membership of the selection committee as presented.*

**Designation of County Morgue**

Henderson County recently received correspondence from the State’s Chief Medical Examiner, in reference to a 2007 addition to the medical examiner statutes which states that “Each County shall provide or contract for an appropriate facility for the examination and storage of bodies under Medical Examiner (ME) jurisdiction.” The letter also notes that there are many instances when a death clearly does not fall under ME jurisdiction, and encourages counties to have similar facility arrangements for those cases.

Henderson County has a lead Medical Examiner, who is located at Pardee Hospital. To meet the request from the State to designate a facility, the Board is requested to designate Pardee Hospital as Henderson County’s morgue facility.

Motion:

*I move that the Board designates Pardee Hospital as Henderson County’s morgue facility.*

**Agreement for Participation in the Statewide Misdemeanant Confinement Program**

The Statewide Misdemeanant Confinement Program was created pursuant to §148-32.1(b2) to provide

housing in local confinement facilities for misdemeanants serving sentences of between 90 and 180 days. The program allows each county to voluntarily agree to house these misdemeanants. The Statewide Misdemeanant Confinement Fund provides reimbursement to counties for expenses incurred for housing these misdemeanants, including the care, supervision, transportation and other related expenses.

Approval of the agreement in no way obligates the county to house these misdemeanants.

Motion:

*I move that the Board approves the agreement as submitted, and authorize the County Manager to execute the agreement.*

### **2012 HOME Grant Applications**

Habitat for Humanity of Henderson County and Housing Assistance Cooperation (HAC) are requesting application approval for HOME Investment Partnerships Program (HOME) funds. HOME funds are administered through the Asheville Regional Housing Consortium. Both projects propose to serve County residents within a range of median household income. The median Henderson County household income in 2011 was \$43,105.

HAC is requesting \$70,000 for construction funds to provide a subsidy for single-family owner-occupied new homes in Henderson County. The funds provide assistance to low and very low income homebuyers in Henderson County families earning 80% of area median income or less.

Habitat for Humanity of Henderson County is requesting \$117,500 in HOME funds in order to aid in the construction of 10 homes in the Dodd Meadows residential neighborhood off Crest Road. Habitat for Humanity plans to use the funds to pay for costs related to slab and footings, HVAC, and flooring and insulation. Using the grant funds, Habitat for Humanity plans to provide affordable housing for families whose income is between 30% and 65% of the median income in Henderson County.

These grants require no County matching funds. The Asheville Regional Housing Consortium requires approval by the Board of Commissioners as part of the application process. The complete applications were too lengthy to include in the agenda packet but are available upon request.

Motion:

*I move that the Board approve the HOME applications for the Housing Assistance Corporation and Henderson County Habitat for Humanity.*

### **Notification of Vacancies**

Chairman Thompson reminded the Board of the following vacancies and opened the floor to nominations:

1. Animal Services Committee – 3 vac.
2. Henderson County Transportation Advisory Committee – 3 vac.
3. Industrial Facilities and Pollution Control Financing Authority – 1 vac.
4. Land-of-Sky Regional Council Advisory Council on Aging – 1 vac.
5. Nursing/Adult Care Home Community Advisory Committee – 1 vac.
6. Recreation Advisory Board – 3 vac.
7. Travel & Tourism Committee – 1 vac.
8. Social Services Board – 1 vac.

### **Nominations**

1. EMS Quality Management Committee – 2 vac.

There were no nominations at this time so this item was rolled to the next meeting.

2. Hendersonville City Zoning Board of Adjustment – 1 vac.

Commissioner Messer nominated Donald Patterson for position #2. Commissioner O'Connor nominated

John Dekker for position #2. This item will be rolled to the next meeting and the Board will be polled.

3. Historic Resources Commission – 2 vac.

Commissioner Young nominated Betty Carter for position #2. *Chairman Thompson made the motion to accept the appointment of Betty Carter to position #2 by acclamation. All voted in favor and the motion carried.*

4. Juvenile Crime Prevention Council – 10 vac.

Commissioner O'Connor nominated Charles Holland for position #23. *Chairman Thompson made the motion to accept the appointment of Charles Holland to position #23 by acclamation. All voted in favor and the motion carried.*

5. Mountain Valleys Resource Conservation and Development Program – 1 vac.

There were no nominations at this time so this item was rolled to the next meeting.

6. Nursing/Adult Care Home Community Advisory Committee – 2 vac.

Commissioner O'Connor nominated Karoline Rice for reappointment to position #21. *Chairman Thompson made the motion to accept the reappointment of Karoline Rice to position #21 by acclamation. All voted in favor and the motion carried.*

7. Senior Volunteer Services Advisory Council – 2 vac.

There were no nominations at this time so this item was rolled to the next meeting.

8. WCCA Board of Directors (Western Carolina Community Action) – 1 vac.

Commissioner O'Connor nominated Sandy Brown for position #2. *Chairman Thompson made the motion to accept the appointment of Sandy Brown to position #2 by acclamation. All voted in favor and the motion carried.*

9. Western Highlands Local Management Entity – 1

Commissioner Messer nominated James Cox for position #2. *Chairman Thompson made the motion to accept the appointment of James Cox to position #2 by acclamation. All voted in favor and the motion carried.*

**DISCUSSION**

**SCHOOL BOARD RESPONSE TO ¼ CENT SALES TAX REFEREDUM**

Chairman of the Henderson County School Board Ervin Bazzle stated all board members support additional revenues in one fashion or another. Mr. Bazzle has been involved in three (3) failed referendums and the timing is crucial. He feels the May primary is too soon and advised the Board to wait until later in the year. It was the consensus of the Board that November would be a better date allowing more time to educate the citizens on how the money will be dedicated to the schools.

**TAX COLLECTOR'S REPORT AS PER NCGS 153-369(A)**

Report of Unpaid Taxes that are Liens on Real Property as required by N.C.G.S. 105-369(a)

In accordance with N.C.G.S. 105-369, Advertisements of Tax Liens on Real Property for Failure to Pay Taxes Delinquent Tax Collector Lee King reported the following information:

Annual Bills (not Including Motor Vehicle)

2011 Total Collector's Charge:	\$57,626,987.69	2010 Total Collector's Charge:	\$57,524,414.37
Payments:	\$53,888,446.50	Payments:	\$53,539,480.68
Unpaid Taxes:	\$ 3,738,541.19	Unpaid Taxes:	\$ 3,984,933.69



Percentage Collected through 31 January 2012: 93.51%  
Percentage Collected at same time (31 Jan) last year: 93.07%

#### Advertisement of Tax Liens:

Effective January 1, 1985, Ch. 1013 (H1676) amends N.C.G.S. 105-369 to provide that tax liens need to be advertised only once. A taxing unit may choose to advertise the tax liens more than one time, but it is not required to do so. The list must still be posted at the Courthouse or City Hall door and it must be advertised in one or more newspapers having a general circulation in the taxing unit. The advertising may be done at any time from March 1 through June 30.

Effective July 1, 2006, N.C.G.S. 105-369 has been modified and will require us to provide notice to and advertise liens under the name of the "record owner as of the date the taxes became delinquent" of real property.

It was recommended to the Board of Commissioners that unpaid tax liens be advertised once on 22 March 2012 (the fourth Thursday in March). The reasons for my recommendation are as follows: (1) the *Hendersonville Tribune* states that they must have ample time for preparation of the advertisement; and (2) with the implementation of the new rules regarding advertisement; our costs per parcel will essentially double even without allowing for any per-inch increase the newspaper may add.

#### Update on Delinquent Tax Collections for FY2011-2012

The Tax Office recently completed an upgrade to the new Debt Set Off Program Software. This allowed them the ability to purge and refresh our data at the clearinghouse. They now have over \$992,000 in delinquent taxes to be collected at the clearinghouse. This will allow them to receive monies if a taxpayer is due a refund on his/her state income tax or lottery winnings by attaching our tax lien to the refund/lottery winnings.

The Tax Office has served 271 bank attachments as part of our enforced collection process this fiscal year. These attachments have the potential to result in the collection of \$551,167.15. They have expanded the legal action procedures to include wage garnishments, rent attachments, and interception of funds due the taxpayer. As of 31 January 2012, they have served 377 wage garnishments with the potential to collect \$103,123.24 in delinquent taxes. The rent attachment program has resulted in 7 attachments being served resulting in the collection of \$36,255.56 in delinquent taxes. They also intercepted funds due a taxpayer in the amount of \$106,676.92 for payment of delinquent taxes.

On 30 November 2011, a tax foreclosure sale was held on the steps of the Courthouse. Twelve properties were offered for sale. Ten were sold and the County was the high bidder on two parcels. This resulted in the recapture of approximately \$13,000.00 in delinquent taxes.

Overall since 1 July 2011 we have collected \$1,509,901.33 in delinquent taxes for this fiscal year, this reflects 86.53% of the budgeted goal of \$1,745,000 for this fiscal year.

#### **ADVERTISEMENT OF DELINQUENT TAX LIENS**

Pursuant to N.C. General Statutes §105-369, the Board is required to order the tax collector to advertise delinquent tax liens, after the collector gives you his required "first Monday in February" report of the amount of delinquent taxes.

*Commissioner Messer made the motion that the Board orders the advertisement of delinquent tax liens. All voted in favor and the motion carried.*

#### **ABANDONED MANUFACTURED HOME REMOVAL GRANT**

Toby Linville explained that in 2008, House Bill 1134 was enacted. The purpose of this bill is to protect public health and the environment by encouraging counties to develop plans that provide for the

deconstruction of abandoned manufactured homes and the removal of reusable or recyclable components, by providing for the abatement of abandoned manufactured homes that are determined to be used to fund the deconstruction and removal of the abandoned manufactured homes.

Henderson County participated in this grant from February 2010 – February 2011 and removed 25 abandoned manufactured homes. We have again been awarded this reimbursement grant. There is a Request for Proposals currently listed on the Henderson County website to close February 20, 2012. The lowest qualified bidder will be chosen to demolish the homes and transport debris to our transfer station and a certified recycling center. We are currently accepting applications for this service.

*Commissioner Messer made the motion that the Board approves a budget amendment for \$37,500 for the expenditure of these reimbursement grant funds. The motion passed 4-1 with Commissioner O'Connor voting nay.*

#### **ABC REFERENDUM**

Russ Burrell stated in 2011 the Board determined that it wished to allow the voters of the County to consider the various options for alcoholic beverage sales in the unincorporated areas of the County. The resolution requests the Board of Elections to hold the referendum, in the time frame set by the applicable statutes.

*Commissioner Young made the motion that the Board approves the resolution included in the agenda packet. All voted in favor and the motion carried.*

#### **NCACC – FEDERAL ISSUES OF STATEWIDE IMPORTANCE**

The North Carolina Association of County Commissioners (NCACC) is soliciting each county's help in identifying those federal issues of statewide importance to all counties. NCACC has asked that the Board to review the NCACC's Board of Directors will vote on February 22, 2012 to determine which issues to present to the N.C. Congressional delegation during NACO's Legislative Conference, being held March 3-7, 2012, in Washington, D.C.

One item for the Board's consideration during discussion is a federal mandate overriding a state's prohibition on collective bargaining of public employees.

Chairman Thompson requested that Commissioner Messer speak on behalf of the Henderson County as he would be attending the meeting.

#### **AMENDMENT TO HENDERSON COUNTY HOSPITAL CORPORATION ARTICLES OF INCORPORATION**

This item was pulled from the agenda.

#### **STAFF REPORTS**

There was nothing further at this time.

#### **IMPORTANT DATES**

##### **Set Public Hearing for Rezoning Application R-2011-04 R-1 to Industrial Zoning**

Rezoning Application #R-2011-04, which was submitted on December 5, 2011, requests the County rezone a 38.6 acre tract. The applicant requests a rezoning from a Residential One (R1) zoning district to an Industrial (I) zoning district. The subject area is owned by Sirocco Properties LLC. (PIN: 9652-55-3637)

The Henderson County Planning Board considered rezoning application #R-2011-04 at its regularly scheduled meeting on January 19, 2012. During that meeting, the Planning Board voted unanimously to send the Board of Commissioners a favorable recommendation for rezoning application #R-2011-04 to zone the Subject Area Industrial (I).

Before taking action on the rezoning request, the Board of Commissioners must hold a public hearing. Staff suggests scheduling the public hearing for March 5, 2012, at 5:30 P.M., or schedule a special called meeting on or after that date.

*Commissioner O'Connor made the motion that the Board schedules a public hearing for rezoning application #R-2011-04 for Monday, March 5, 2012, at 5:30 P.M. All voted in favor and the motion carried.*

#### **Set Public Hearing on 2011 Scatter Site Housing Rehabilitation CDBG Application**

The 2011 Scattered Site Housing Rehabilitation (SSH) Community Development Block Grant (CDBG) application cycle is beginning and Henderson County is eligible to apply for the \$400,000 grant. Counties are awarded this grant automatically every 3 years. However, a process of hearings for the application is required. The Board has held the initial hearing and a second public hearing is required. The purpose of the second hearing is to receive public comment regarding the proposed application. The Selection Committee, appointed by the Board, will determine which homes to include for rehabilitation.

No local match (County funds) is required for this grant. It is expected that the grant will provide for the rehabilitation of 4-8 homes where the family qualifies under CDBG regulations.

*Commissioner O'Connor made the motion that the Board schedules a public hearing for the 2011 SSH CDBG grant for Monday, March 5, 2012, at 5:30 P.M. All voted in favor and the motion carried.*

#### **CLOSED SESSION**

*Commissioner Edney made the motion for the Board to go into closed session as allowed pursuant to NCGS 143-318.11 for the following reasons:*

The Board is requested to go into closed session pursuant to N.C. Gen. Stat. §143-318.11(a), for the following reason(s):

- A. Pursuant to N.C. Gen. Stat. §143-318.11(a)(3), to consult with an attorney employed or retained by the Board to preserve attorney-client privilege. This consultation is with regard to a specific case, namely Gannett Pacific Corporation vs. Henderson County et al., currently pending in the Henderson County Superior Court.
- B. Pursuant to N.C. Gen. Stat. §143-318.11(a)(3), to consult with an attorney employed or retained by the Board to preserve attorney-client privilege.
- C. Pursuant to N.C. Gen. Stat. §143-318.11(a)(4), to discuss matters relating to the location or expansion of industries or other businesses in Henderson County, including agreement on a tentative list of economic development incentives that may be offered by the Board in negotiations.

*All voted in favor and the motion carried.*

#### **ADJOURN**

*Commissioner O'Connor made the motion to go out of closed session and adjourn at 8:35 p.m. All voted in favor and the motion carried.*

Attest:

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Teresa L. Wilson, Clerk to the Board

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Thomas H. Thompson, Chairman

# HENDERSON COUNTY TAX DEPARTMENT

Collector's Office  
200 North Grove Street  
Suite 66  
Hendersonville, NC 28792

Phone: 828/697-5595  
Fax: 828/698-6153

[www.hendersoncountync.org/tc/](http://www.hendersoncountync.org/tc/)

Stan C. Duncan  
County Assessor & Tax Collector

Sandy Allison  
Administrative Assistant II

February 1, 2012

## Re: Tax Collector's Report to Commissioners – 02/06/12 Meeting

Please find outlined below collections information through January 31st for the 2011 bills, which were mailed out on August 19<sup>th</sup>, as well as registered motor vehicle bills. As a point of reference, we also have included collections information as of the same date last year.

### Annual Bills G01 Only:

2011 Total Charge \$57,626,987.69  
Payments & Releases: 53,888,446.50  
Unpaid Taxes: 3,738,541.19  
Percentage Collected: 93.51%  
(through 01/31/12)

2010 Total Charge: \$57,524,414.37  
Payments & Releases: 53,741,071.90  
Unpaid Taxes: 3,783,342.47  
Percentage Collected: 93.42%  
(through 01/31/11)

### Motor Vehicle Bills G01 Only:

2011 Total Charge: \$2,849,707.60  
Payments & Releases: 2,247,445.86  
Unpaid Taxes: 602,261.74  
Percentage Collected: 78.86%  
(through 01/31/12)

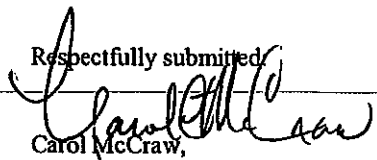
2010 Total Charge: \$2,864,287.71  
Payments & Releases: 2,156,207.96  
Unpaid Taxes: 708,079.75  
Percentage Collected: 75.28%  
(through 01/31/11)

### Fire Districts All Bills:

2011 Total Charge: \$6,688,879.79  
Payments & Releases: 6,170,839.04  
Unpaid Taxes: 518,040.75  
Percentage Collected: 92.26%  
(through 01/31/12)

2010 Total Charge: \$6,592,808.95  
Payments & Releases: 6,079,730.48  
Unpaid Taxes: 513,078.47  
Percentage Collected: 92.50%  
(through 01/31/11)

Respectfully submitted,

  
Carol McCraw,  
Deputy Tax Collector

Stan C. Duncan,  
Tax Collector

**HENDERSON COUNTY TAX DEPARTMENT**  
**Collector's Office**  
**200 North Grove Street**  
**Suite 66**  
**Hendersonville, NC 28792**

Phone: 828/697-5595

Fax: 828/698-6153

www.hendersoncountync.org/tc/

Stan C. Duncan  
County Assessor & Tax Collector

Sandy Allison  
Administrative Assistant II

6 February 2012

Henderson County Board of Commissioners  
1 Historic Courthouse Square, Suite 1  
Hendersonville, NC 28792

RE: Tax Collector's Report to Commissioners: 6 February 2012 Meeting  
Report of Unpaid Taxes that are Liens on Real Property as required by N.C.G.S. 105-369(a)

Dear Henderson County Commissioners:

In accordance with N.C.G.S. 105-369, Advertisements of Tax Liens on Real Property for Failure to Pay Taxes, I respectfully submit the following report:

Annual Bills (not Including Motor Vehicle)

2011 Total Collector's Charge:	\$57,626,987.69	2010 Total Collector's Charge:	\$57,524,414.37
Payments:	\$53,888,446.50	Payments:	\$53,539,480.68
Unpaid Taxes:	\$ 3,738,541.19	Unpaid Taxes:	\$ 3,984,933.69

Percentage Collected through 31 January 2012: 93.51%

Percentage Collected at same time (31 Jan) last year: 93.07%

Advertisement of Tax Liens:

Effective January 1, 1985, Ch. 1013 (H1676) amends N.C.G.S. 105-369 to provide that tax liens need to be advertised only once. A taxing unit may choose to advertise the tax liens more than one time, but it is not required to do so. The list must still be posted at the Courthouse or City Hall door and it must be advertised in one or more newspapers having a general circulation in the taxing unit. The advertising may be done at any time from March 1 through June 30.

Effective July 1, 2006, N.C.G.S. 105-369 has been modified and will require us to provide notice to and advertise liens under the name of the "record owner as of the date the taxes became delinquent" of real property.

It is my recommendation to the Board of Commissioners that unpaid tax liens be advertised once on 22 March 2012 (the fourth Thursday in March). The reasons for my recommendation are as follows: (1) the Hendersonville Tribune states that they must have ample time for preparation of the advertisement; and (2) with the implementation of the new rules regarding advertisement; our costs per parcel will essentially double even without allowing for any per-inch increase the newspaper may add.

Respectfully submitted,

*William Lee King for Stan C. Duncan*

Stan C. Duncan  
Henderson County Tax Collector

cc: wlk

**HENDERSON COUNTY TAX DEPARTMENT**  
**Collector's Office**  
**200 North Grove Street, Suite 66**  
**Hendersonville, NC 28792**

Phone: 828/697-5595

Fax: 828/698-6153

[www.hendersoncountync.org/tc/](http://www.hendersoncountync.org/tc/)

Stan C. Duncan  
Tax Collector & County Assessor

Sandy Allison  
Administrative Assistant II

6 February 2012

Henderson County Board of Commissioners  
1 Historic Courthouse Square  
Hendersonville, NC 28792

RE: Tax Collector's Report to Commissioners: 6 February 2012 Meeting  
Update on Delinquent Tax Collections for FY2011-2012

Dear Henderson County Commissioners:

We have recently completed an upgrade to the new Debt Set Off Program Software. This allowed us the ability to purge and refresh our data at the clearinghouse. We now have over \$992,000 in delinquent taxes to be collected at the clearinghouse. This will allow us to receive monies if a taxpayer is due a refund on his/her state income tax or lottery winnings by attaching our tax lien to the refund/lottery winnings.

We have also served 271 bank attachments as part of our enforced collection process this fiscal year. These attachments have the potential to result in the collection of \$551,167.15. We have expanded our legal action procedures to include wage garnishments, rent attachments, and interception of funds due the taxpayer. As of 31 January 2012, we have served 377 wage garnishments with the potential to collect \$103,123.24 in delinquent taxes. The rent attachment program has resulted in 7 attachments being served resulting in the collection of \$36,255.56 in delinquent taxes. We also intercepted funds due a taxpayer in the amount of \$106,676.92 for payment of delinquent taxes.

On 30 November 2011, a tax foreclosure sale was held on the steps of the Courthouse. Twelve properties were offered for sale. Ten were sold and the County was the high bidder on two parcels. This resulted in the recapture of approximately \$13,000.00 in delinquent taxes.

Overall since 1 July 2011 we have collected \$1,509,901.33 in delinquent taxes for this fiscal year, this reflects 86.53% of the budgeted goal of \$1,745,000 for this fiscal year.

Respectfully submitted,



William Lee King  
Delinquent Tax Collector

Stan C. Duncan  
Henderson County Tax Collector

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IN THE MATTER OF THE ADVERTISEMENT OF TAX LIENS

---

**ORDER**

Having received the report of the Henderson County Tax Collector dated 6 February 2012, which report indicates that there exist unpaid taxes for Tax Year 2011 of \$3,738,541.19, it appears to the Board of Commissioners of Henderson County and the Board so finds that it is appropriate and necessary to advertise, pursuant to N.C. Gen. Stat. §105-369, Tax Liens on Real Property for Failure to Pay Taxes.

WHEREFORE, IT IS ORDERED that the Henderson County Tax Collector proceed to advertise the tax liens pursuant to N.C. Gen. Stat. §105-369.

Unanimously adopted, this 6<sup>th</sup> day of February 2012.

HENDERSON COUNTY BOARD OF COMMISSIONERS

By:   
THOMAS H. THOMPSON, Chairman

Attest:

  
TERESA L. WILSON, Clerk to the Board



**LINE-ITEM TRANSFER REQUEST  
HENDERSON COUNTY**



**Department:** Code Enforcement Services

Please make the following line-item transfers:

What expense line-item is to be increased?

Account	Line-Item Description	Amount
<u>115492 538100</u>	<u>Professional Services</u>	<u>\$ 37,500</u>
<u> </u>	<u> </u>	<u> </u>
<u> </u>	<u> </u>	<u> </u>
<u> </u>	<u> </u>	<u> </u>

What expense line-item is to be decreased? Or what additional revenue is now expected?

Account	Line-Item Description	Amount
<u>114492 457005</u>	<u>State - AMH Grant PR</u>	<u>\$ 37,500</u>
<u> </u>	<u> </u>	<u> </u>
<u> </u>	<u> </u>	<u> </u>
<u> </u>	<u> </u>	<u> </u>

**Justification:**

Henderson County has again received the NCDENR abandoned manufactured home removal grant.

Toby Linville  
Authorized by Department Head

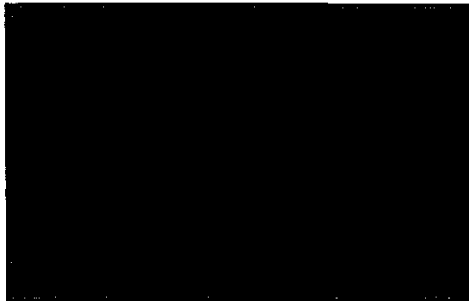
1/25/2012  
Date

   
Authorized by Budget Office

   
Date

   
Authorized by County Manager

   
Date





# HENDERSON COUNTY BOARD OF COMMISSIONERS

1 Historic Courthouse Square, Suite 1  
Hendersonville, North Carolina 28792-5097  
Phone: 828-697-4808 · Fax: 828-692-9855  
[www.hendersoncountync.org](http://www.hendersoncountync.org)

THOMAS H. THOMPSON  
Chairman  
WILLIAM O'CONNOR  
Vice Chairman

J. MICHAEL EDNEY  
CHARLIE MESSER  
LARRY YOUNG

February 6, 2012

Mr. Mike Scruggs, Chairman  
Henderson County Republic Party  
Post Office Box 2552  
Hendersonville, North Carolina 28793

**HAND DELIVERED**

Dear Chairman Scruggs:

Now that this Board is aware of an official vacancy in the Office of Sheriff of Henderson County (with an effective date of March 1, 2012), it is important to fill this vacancy as quickly as possible. This is a most important office in local government, and the prompt naming of the new officeholder is clearly in the best interest of the people of our County.

As you are aware, Section 162-5.1 of the North Carolina General Statutes mandates the procedure for filling a vacancy in the office of Sheriff in Henderson County:

**If any vacancy occurs in the office of sheriff, . . . the board [of Commissioners] shall elect a sheriff to supply the vacancy for the residue of the term, who shall possess the same qualifications, enter into the same bond, and be subject to removal, as the sheriff regularly elected. If the sheriff were elected as a nominee of a political party, the board of commissioners shall consult the county executive committee of that political party before filling the vacancy, and shall elect the person recommended by the county executive committee of that party, if the party makes a recommendation within 30 days of the occurrence of the vacancy.**

As for "qualifications", Section 162-2 states:

**No person shall be eligible for the office of sheriff who is not of the age of 21 years, or has not resided in the county in which he is chosen for one year immediately preceding his election. No person shall engage in the practice of law or serve as a member of the General Assembly while serving as sheriff.**

Please consider this the official consultation of our Board with your Executive Committee. We request that you name your recommendation for the position of Sheriff in time for our consideration shortly after the actual vacancy occurs, but in any event in time for our meeting of March 5, 2012.

We greatly appreciate and thank you for your assistance in this matter.

Sincerely,



Thomas H. Thompson, Chairman  
Henderson County Board of Commissioners

NC STATE UNIVERSITY

Henderson County Center  
100 Jackson Park Road  
Hendersonville, NC 28792  
828-697-4891  
<http://henderson.ces.ncsu.edu>

January 27, 2012

Mr. David Whitson  
Interim Assistant County Manager  
1 Historic Courthouse Square  
Hendersonville, NC 28792

Dear Mr. Whitson,

The Henderson County Extension Center is combining two Horticultural Agent positions into one. First, Diane Turner's Consumer Horticulture Position, 5 man days per week (fully funded by County). Second, Cliff Ruth's Commercial Ornamental Horticulture Position 3 days per week (partially funded by County) will be combined into one full time County Position (five man days). So, we are reducing our staff man days from 8 days to 5 days. This will be a cost saving for the County. I believe by hiring an experienced Horticulture Agent working 50% Consumer Horticulture and 50% Commercial Horticulture we can and will make up the loss of our 3 man days. Service levels to our citizens will not be reduced.

We are also asking to reinstate our old Livestock Agent position for one man day per week. This agent will be housed in Buncombe County, working three days in Buncombe County, one day in Henderson County and one day in Polk County.

During the new 2012-2013 budget process I would like to use our savings to increase our line item budget. I would like to use that increased budget for the purchase of new computers and software upgrades, plus increase the fuel allocation for our County van.

If you have any questions please don't hesitate to call or email.

Sincerely,



Marvin A. Owings, Jr.  
County Extension Director

cc: Dan Smith

MAO:io

**8.3. Option A.**

All EPA employees \_\_\_\_\_ % County \_\_\_\_\_ % NCSU/NCA&T

All SPA employees \_\_\_\_\_ % County \_\_\_\_\_ % NCSU/NCA&T

\* any position added to this county's staff of Extension Personnel subsequent to the effective date of this Agreement will adhere to the above percentages.


Board Chair or County Manager Signature	Printed Name	Title	Date
<i>Signature for Option A Lock-in Provision ONLY</i>			

**OR**

**8.3. Option B.** Each position shared per the list of detailed percentages below:

Co. Ext. Director	49	% County	51	% NCSU/NCA&T
Ext. Agent - 4-H	49	% County	51	% NCSU/NCA&T
Ext. Agent - Ag	49	% County	51	% NCSU/NCA&T
Ext. Agent - FCS	49	% County	51	% NCSU/NCA&T
Area Spec. Agent - Veg	30	% County	50	% NCSU/NCA&T
<del>Area Agent - Nursery</del>	<del>29</del>	<del>% County</del>	<del>53.18</del>	<del>% NCSU/NCA&amp;T</del>
Area Agent - Livestock	10	% County	50	% NCSU/NCA&T
Program Asst. - 4-H	66	% County	34	% NCSU/NCA&T
Adm. Secretary	49	% County	51	% NCSU/NCA&T
Co. Ext. Secretary II	49	% County	51	% NCSU/NCA&T
_____	_____	% County	_____	% NCSU/NCA&T
_____	_____	% County	_____	% NCSU/NCA&T

\* any position added to this county's staff of Extension Personnel through mutual agreement between the County and NCSU/NCA&T subsequent to the effective date of this Agreement will document the funding splits in correspondence between this County and NCSU/NCA&T, and will become a part of this Agreement.

	Thomas H. Thompson	Chairman Henderson County Commissioner	2-7-12
Board Chair or County Manager Signature	Printed Name	Title	Date
<i>Signature for Option B Lock-in Provision ONLY</i>			

**COOPERATIVE EXTENSION  
POSITIONS FUNDED BY THE COUNTY**

CURRENT FUNDED POSITION PER BOARD ACTION ON THE MOU - 11.17.10 AND 1.3.11

Position	SALARY	BENEFITS *	TOTAL	%	\$	Paid By	%	\$	Paid By
Extension Director	\$ 74,930	\$ 20,942	\$ 95,872	49%	\$ 46,977	County	51%	\$ 48,895	NCSU
Area Agent - Agriculture 1	\$ 39,174	\$ 13,301	\$ 52,475	30.36%	\$ 15,931	County	50.60%	\$ 26,552	NCSU
Extension Agent - Agriculture 1	\$ 50,564	\$ 15,735	\$ 66,299	49%	\$ 32,487	County	51%	\$ 33,813	NCSU
Area Agent - Agriculture 2 (Nursery Crops)	\$ 54,061	\$ 16,482	\$ 70,543	29%	\$ 20,458	County	71.00%	\$ 50,086	NCSU
Position to be transferred to Buncombe County									
Area Agent - Agriculture 3 (Livestock)	\$ 45,622	\$ 14,679	\$ 60,301	10%	\$ 6,030	County	50%	\$ 30,151	NCSU
							30%	\$ 18,090	Buncombe
							10%	\$ 6,030	Transylvania
Extension Agent - Family Consumer Science	\$ 60,352	\$ 17,827	\$ 78,179	49%	\$ 38,308	County	51%	\$ 39,871	NCSU
Extension Agent - 4H Program	\$ 42,096	\$ 13,926	\$ 56,022	49%	\$ 27,451	County	51%	\$ 28,571	NCSU
4H Program Assistant	\$ 25,347	\$ 10,346	\$ 35,693	66%	\$ 23,558	County	34%	\$ 12,136	NCSU
Administrative Secretary	\$ 33,000	\$ 11,982	\$ 44,982	49%	\$ 22,041	County	51%	\$ 22,941	NCSU
Secretary 1	\$ 30,000	\$ 11,341	\$ 41,341	49%	\$ 20,257	County	51%	\$ 21,084	NCSU
<b>TOTAL</b>	<b>\$ 455,146</b>	<b>\$ 146,561</b>	<b>\$ 601,707</b>		<b>\$ 253,497</b>	<b>County</b>		<b>\$ 338,219</b>	<b>NCSU</b>

PROPOSED CHANGES PER COOPERATIVE EXTENSION REQUEST 12.9.11

Position	SALARY	BENEFITS *	TOTAL	%	\$	Paid By	%	\$	Paid By
Extension Director	\$ 74,930	\$ 20,942	\$ 95,872	49%	\$ 46,977	County	51%	\$ 48,895	NCSU
Area Agent - Agriculture 1	\$ 39,174	\$ 13,301	\$ 52,475	30.36%	\$ 15,931	County	50.60%	\$ 26,552	NCSU
Extension Agent - Agriculture 1 (Split Commercial/Consumer Horticulture)	\$ 55,000	\$ 16,683	\$ 71,683	49%	\$ 35,125	County	51%	\$ 36,558	NCSU
Area Agent - Agriculture 3 (Livestock)	\$ 45,622	\$ 14,679	\$ 60,301	10%	\$ 6,030	County	50%	\$ 30,151	NCSU
							30%	\$ 18,090	Buncombe
							10%	\$ 6,030	Transylvania
Extension Agent - Family Consumer Science	\$ 60,352	\$ 17,827	\$ 78,179	49%	\$ 38,308	County	51%	\$ 39,871	NCSU
Extension Agent - 4H Program	\$ 42,096	\$ 13,926	\$ 56,022	49%	\$ 27,451	County	51%	\$ 28,571	NCSU
4H Program Assistant	\$ 25,347	\$ 10,346	\$ 35,693	66%	\$ 23,558	County	34%	\$ 12,136	NCSU
Administrative Secretary	\$ 33,000	\$ 11,982	\$ 44,982	49%	\$ 22,041	County	51%	\$ 22,941	NCSU
Secretary 1	\$ 30,000	\$ 11,341	\$ 41,341	49%	\$ 20,257	County	51%	\$ 21,084	NCSU
<b>TOTAL</b>	<b>\$ 405,521</b>	<b>\$ 131,026</b>	<b>\$ 536,547</b>		<b>\$ 235,677</b>	<b>County</b>		<b>\$ 290,879</b>	<b>NCSU</b>
<b>TOTAL PROPOSED REDUCTION</b>	<b>\$ 49,625</b>	<b>\$ 15,534</b>	<b>\$ 65,159</b>		<b>\$ 17,819</b>			<b>\$ 47,340</b>	

\* Final Benefit Rates announced July 27, 2011 = 21.37% of total salary + \$4,929.60 annually (original projected was 19.76% of total salary + \$5,176.08 annually)

**RESOLUTION IN SUPPORT OF  
SIERRA NEVADA BREWING CO.  
TO LOCATE A MANUFACTURING FACILITY  
IN HENDERSON COUNTY, NORTH CAROLINA**

**WHEREAS**, Sierra Nevada Brewing Co. is considering locating a manufacturing facility in Mills River, Henderson County, North Carolina; and,

**WHEREAS**, Sierra Nevada Brewing Co. proposes to invest \$107,500,000.00 and to employ at least ninety-three (93) persons when the company is fully operational; and,

**WHEREAS**, Sierra Nevada Brewing Co. plans are consistent with local land use and state and local transportation plans; and,

**WHEREAS**, Sierra Nevada Brewing Co. plans conform with all applicable state and local ordinances and policies; and,

**WHEREAS** the (city or county) is committed to work with the NCDOT in a leadership role to make transportation improvements that address the safety needs of the public, and contractors and employees of Sierra Nevada Brewing Co.

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

Section 1: Henderson County supports the location of the Sierra Nevada Brewing Co. in Mills River, Henderson County, North Carolina, and confirms that its plans are consistent with and conform with state and local laws, plans and policies.

Section 2: Henderson County endorses the application of Sierra Nevada Brewing Co. to request financial support from the North Carolina Department of Transportation to assist in the funding of a rail industrial access track to serve Sierra Nevada Brewing Co.


Section 3: Henderson County commits to work with the NCDOT to make needed transportation improvements necessary to protect the safety of the public, and contractors and employees of Sierra Nevada Brewing Co.

Approved after motion duly made by the Henderson County Board of Commissioners, this the 6<sup>th</sup> day of February, 2012.

**HENDERSON COUNTY BOARD OF COMMISSIONERS**

By   
**THOMAS H. THOMPSON, CHAIRMAN**

Attest:

  
Teresa L. Wilson, Clerk to the Board

STATE OF NORTH CAROLINA

COUNTY OF HENDERSON

**AGREEMENT**

This Agreement is made and entered into this the 6<sup>th</sup> day of February, 2012, by and between Henderson County, a body politic and corporate, hereinafter "County", Sierra Nevada Brewing Co., hereinafter "Company", and Wild River Corp., hereinafter "Landowner".

**WITNESSETH:**

Whereas, the County is a body politic and corporate having the capacity to contract under N.C.G.S. § 153A-11; and

Whereas, the Company is a California corporation authorized to do business in North Carolina; and

Whereas the Landowner is a North Carolina corporation affiliated with the Company;

Whereas, the Company has been considering commencing operations in Henderson County, which if it occurs is estimated by the Company to result in a capital investment of at least One Hundred Seven Million Five Hundred Thousand Dollars (\$107,500,000.00), of which not less than Thirty Million Dollars (\$30,000,000.00) is in real property improvements, and not fewer than ninety-three (93) new jobs, paying an average wage in excess of Forty-One Thousand Five Hundred Seventy-Nine Dollars (\$41,579) per year (plus other benefits); and

Whereas, the Company has stated that Henderson County is competing with one or more other sites for the location of the capital investment.

Whereas, the Landowner holds the option to purchase certain real estate located in Henderson County upon which the Company will, if it chooses to locate its new business in Henderson County, build the facility in which the capital investment referred to above will occur; and

Whereas, the Company requested assistance from the County in the form of Economic Incentives to offset thereal estate acquisition cost; and

Whereas, in reliance upon the Company's representations to the County concerning the net capital investment to be made, the County set a public hearing for December 12, 2011, and in further reliance upon the Company's representations to the County, duly advertised in the Hendersonville Tribune, a newspaper having daily general circulation in Henderson County, on December 1, 2011, their intent to consider granting Economic Incentives to the Company and/or Landowner consisting of assistance with the acquisition of real estate, a total amount not to exceed a total of Three Million Seven Hundred Fifty Thousand Dollars (\$3,750,000.00) Dollars to be reimbursed to the Landowner over a period of years as stated herein; and

Whereas, the County has the authority under N.C. Gen. Stat. § 158-7.1(a) to assist industries in the expenses associated with the start-up of expanded operations where the

assistance will stimulate the local economy, will promote business, and benefit the public by generating additional tax revenue for the County; and

Whereas, the County has determined after a duly advertised public hearing held on December 12, 2011, that the investment and new employment as stated above by the Company would benefit the public in Henderson County; and

Whereas, the County has determined that a capital investment of One Hundred Seven Million Five Hundred Thousand Dollars (\$107,500,000.00) will benefit the county by generating an additional One Hundred Seven Million Five Hundred Thousand Dollars (\$107,500,000.00) in taxable capital property, real or personal; and

NOW, THEREFORE, in consideration of the mutual covenants and promises and obligations contained herein below, the parties agree as follows:

1. The Landowner will execute its option to purchase the real property located in Henderson County upon which the Company will construct a new plant and other sites for operations in Henderson County (together, "the Facility"), and will acquire the requisite equipment for the same.

2. The Company will construct the Facility, and will acquire the requisite equipment for the same. The construction and equipping shall result in a capital investment by the Company in the real property acquired by the Landowner (not including the land purchase price) in the amount of Thirty Million Dollars (\$30,000,000.00), and in personal property in an amount of not less than Seventy-Seven Million Five Hundred Thousand Dollars (\$77,500,000.00). The capital investment shall be of the type and occur (in amounts and time) by not later than the schedule shown in Appendix A. The capital investment will be taxable by the County pursuant to N.C. Gen. Stat. §105-274. (The construction and equipping of the new operation and requisite taxable investment are hereinafter referred to as the "Capital Investment Requirement.") It is understood and agreed by both parties to this Agreement that the Henderson County Assessor will make an independent valuation of all such property constituting the Capital Investment Requirement for *ad valorem* tax purposes at its true value in money (defined as fair market value in N.C. Gen. Stat. §105-382) as required by N.C. Gen. Stat. §105-382. In the event the Company disagrees with the independent valuation placed upon such real and personal property by the Henderson County Assessor, the Company shall have the right to appeal such valuation to the Henderson County Board of Equalization and Review and further to the North Carolina Property Tax Commission in accordance with the North Carolina General Statutes.

3. The Company shall complete the Capital Investment Requirement in a timely manner and with due diligence, but in any event in the amounts and at not later than the dates set out in Appendix A. The respective amounts and dates collectively are the "Capital Investment Term." In the event the Company fails to complete the Capital Investment Requirement as required by the Capital Investment Term, the Landowner shall reimburse any and all Economic Incentives (as hereinafter defined) which have been paid to the County promptly and without delay.

4. During the Term hereof, the Company shall list the Capital Investment each year as required by the Henderson County Assessor's Office, and the Capital Investment shall be depreciated pursuant to the Henderson County Assessor's Office guidelines in existence at the time of listing. Company shall pay to the County directly (or possibly indirectly under certain lease terms if the Capital Investment constitutes leased property) the *ad valorem* property tax on the applicable portion of the Capital Investment by January of the year after it is listed, as set forth in the County's annual personal property tax bill. The amount of *ad valorem* personal property taxes paid to the County for a particular *ad valorem* property tax year related to items comprising the Capital Investment shall constitute "Capital Investment Taxes". Upon payment of Capital Investment Taxes, Company shall be eligible for the Economic Incentives as set forth in Paragraph 5 below.

5. The Landowner shall be entirely responsible for acquiring and paying all expenses for all real property needed for the Company's sites, and the Company shall be entirely responsible for completing the real and personal property improvements and for paying all expenses associated with the Capital Investment Requirement. However, so long as the Landowner has acquired the real estate needed by the Company and the Company has complied with all other requirements imposed upon it stated herein, the County shall reimburse the Landowner for a portion of the actual real estate acquisition costs by paying the landowner as follows:

- a. On or before 31 December 2012, the sum of One Million Three Hundred Seventy-Five Thousand Dollars (\$1,375,000.00).
- b. On or before 31 December 2013, the sum of Two Hundred Sixty-Seven Thousand Six Hundred Seventy-Two Dollars and Forty Cents (\$267,672.40).
- c. On or before 31 December, 2014, the sum of Two Hundred Sixty-Seven Thousand Six Hundred Seventy-Two Dollars and Forty Cents (\$267,672.40).
- d. On or before 31 December, 2015, the sum of Two Hundred Sixty-Seven Thousand Six Hundred Seventy-Two Dollars and Forty Cents (\$267,672.40).
- e. On or before 31 December 2016, the sum of Two Hundred Sixty-Seven Thousand Six Hundred Seventy-Two Dollars and Forty Cents (\$267,672.40).
- f. On or before 31 December, 2017, the sum of Two Hundred Sixty-Seven Thousand Six Hundred Seventy-Two Dollars and Forty Cents (\$267,672.40).

The County shall not pay any interest to the Landowner on any portion of the Economic Incentives paid to the Landowner by the County pursuant to the terms of this Agreement.

6. The Company and Landowner shall indemnify and hold harmless Henderson County for any and all occurrences associated with the Expansion. The terms of this paragraph shall survive any termination of this Agreement, or any determination or event rendering this Agreement null and void.

7. The Term of this Agreement shall run from the Effective Date through midnight, December 31, 2020.

8. If the Company shall make a determination to cease operation of the Facility prior to the end of the Term, this Agreement shall be deemed terminated, and Henderson



County shall have no further obligations hereunder, including but not limited to the obligation to pay any further installments on the Economic Incentives after the date of such cessation of operation.

9. Not later than thirty (30) days after the completion of the Capital Investment Requirement, the Company shall certify in writing by one authorized to execute contracts on behalf of Company to the County that the Capital Investment has been completed, hereinafter "Capital Investment Certification". The Company shall include with such Capital Investment Certification evidence that the total Capital Investment required by the terms of this Agreement has been completed and paid for by the Company. Such evidence shall consist of invoices, purchase orders, canceled checks, and other documents which will reasonably prove to the satisfaction of the County that the obligation for an One Hundred Seven Million Five Hundred Thousand Dollars (\$107,500,000.00) taxable capital investment has been met by the Company on the schedule required by Appendix A. In the event the Company fails to provide the Capital Investment Certification and evidence required by the terms of this Paragraph to the County within the time frame specified above, this Agreement shall be deemed terminated, and the County shall have no further obligation hereunder.

10. The Company shall certify to the County in writing by one authorized to execute contracts on behalf of the Company the Start-up Costs associated with the Expansion, the certification being referred to as "Certification of Start-Up Costs". The Company shall include with the Certification of Start-Up Costs adequate documentation that the Expansion has been completed and paid for and adequate documentation as to the amount spent for Start-up Costs. Such adequate documentation may consist of invoices, purchase orders, canceled checks, and other documents which will reasonably prove to the satisfaction of the County the Start-up Costs paid for by the Company. As provided above, the County's obligation to begin reimbursement for Start-Up Costs shall not be triggered until such Certification of Start-Up Costs and supporting documentation has been received by the County.

11. The Company agrees that any duly authorized representative of the County shall have access to and the right to reasonably inspect, copy, audit, and examine all of the books, records, and other documents relating to the fulfillment of this Agreement during the Term.

12. The Landowner may, at any time during the Term, refund the Economic Incentives, or portion thereof, paid to the Landowner by the County pursuant to the terms of this Agreement. Such refund shall end all obligations of the Company all obligations to complete the Capital Investment imposed by the terms of this Agreement.

13. Not later than 90 days after the Company provides to the County the Capital Investment Certification and the Certification of Costs, and annually thereafter for the term of this agreement, the Company shall provide to the County in writing, executed by one authorized to execute contracts on behalf of the Company, accurate certification (collectively, "Employment Certification") that the Company employs at least ninety-three (93) jobs paying an average wage of Forty-One Thousand Five Hundred Seventy-Nine Dollars (\$41,579.00), plus benefits, which would not exist in the absence of the Company's expenditure of the Capital Investment. As a part of the Employment Certification, the Company shall provide the County with a list of the positions created as a result of this Agreement, the average wage rate for such

positions, and a summary of the other employment benefits received by the persons in those positions. Should the Company fail to make any Employment Certification, the Landowner shall immediately repay to the County the remaining principal amount secured by the Deed of Trust pursuant to paragraph 14, below, or the total amount of incentives payments received by it from the County, whichever is lesser.

14. The Landowner shall pledge a valid first lien on all real estate acquired by it in Henderson County pursuant to this Agreement (by means of a first Deed of Trust in favor of Charles Russell Burrell, Trustee for the County), as collateral to secure the performance by the Company of all its obligations hereunder. The original principal amount of such Deed of Trust shall be Two Million Seven Hundred Thousand Thirteen Thousand Three Hundred Sixty-Two Dollars (\$2,713,362.00). The principal amount secured by such Deed of Trust shall decrease by one-eighth (1/8) of the original principal value for each year no breach occurs through the end of the Term of this Agreement. It is specifically agreed that the Company's obligations hereunder include, but are not limited to, the timely completion of the Capital Investment Certification or each required Employment Certification.

15. No provision of this Agreement shall be construed or interpreted as creating a pledge of the faith and credit of the County within the meaning of any constitutional debt limitation. No provision of this Agreement shall be construed or interpreted as delegating governmental powers nor as a donation or a lending of the credit of the County within the meaning of the State Constitution. This Agreement shall not directly or indirectly or contingently obligate the County to make any payments beyond those appropriated in the County's sole discretion for any fiscal year in which this Agreement shall be in effect. No provision of this Agreement shall be construed to pledge or to create a lien on any class or source of the County's moneys, nor properties, nor shall any provision of the Agreement restrict to any extent prohibited by law, any action or right of action on the part of any future County governing body. To the extent of any conflict between this Paragraph and any other paragraph of this Agreement, this Paragraph shall take priority.

16. The Company shall be entirely responsible for, and shall bear all risk of loss associated with the Expansion and with the creation of new employment. Further, in the event that the assistance provided by the County hereunder, or any party thereof, is deemed by a court of competent jurisdiction to be *ultra vires* or not authorized by the laws or constitution of the State of North Carolina, the Company shall promptly refund all amounts paid hereunder by the County to the County. This Paragraph shall survive the expiration or termination of this Agreement.

17. This Agreement shall bind all successors and assigns of the Company; however, neither this Agreement, nor the right to payment under the terms of this Agreement, may be assigned by the Company, or otherwise used as collateral for any obligations of the Company, financial or otherwise without the expressed written consent of the Henderson County Board of Commissioners.

18. This Agreement shall be governed by the laws of the State of North Carolina.

19. The Company represents and warrants to the County that the Company and Landowner will comply with all applicable local, State, and Federal laws in carrying out the obligations incurred by the Company under the terms of this Agreement.

20. Any written notice or written certification or payment required by the terms of this Agreement shall be deemed given if delivered in person, or mailed certified mail, return receipt requested to the persons named below:

To the County: Charles Russell Burrell, County Attorney  
Office of the County Attorney  
1 Historic Courthouse Square, Suite 5  
Hendersonville, NC 28792

To the Company: \_\_\_\_\_  
SIERRA NEVADA BREWING CO.  
1075 East 20<sup>th</sup> Street  
Chico, CA 95928

For the Landowner: Wild River Corp.  
c/o Sierra Nevada Brewing Co.  
1075 East 20<sup>th</sup> Street  
Chico, CA 95928

20. In the event any term, covenant or condition of this Agreement is deemed invalid or unenforceable, the remainder of this Agreement, of the application of such term, covenant or condition to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected and each term, covenant or condition of this Agreement shall be valid and be enforced to the fullest extent permitted by law.

21. The provisions hereof shall inure to the benefit of and bind the parties hereto and their respective heirs, successor and assigns. This document shall be considered to have been prepared equally by the parties hereto and shall not be construed more strictly against either of them. The provision hereof shall be liberally construed to give effect to their apparent intent.


22. This Agreement constitutes the entire agreement of the parties hereto and may not be modified or canceled except pursuant to the terms hereof or an instrument in writing signed by the parties hereto.

23. This Agreement may be executed in one or more counterparts and shall become effective when one or more counterparts have been signed by all of the parties; each counterpart shall be deemed an original but all counterparts shall constitute a single instrument.


24. Any provision herein contained which by its nature and effect is required to be observed, kept, or performed after the execution of this Agreement shall survive said execution and remain binding upon and for the benefit of the parties until fully observed, kept, or performed. Provided however, that all provisions of this Agreement which by their terms survive any termination of this Agreement shall survive indefinitely.

Now, therefore, the parties have caused this Agreement to be duly approved and duly executed in quadruplicate, each to have the force and effect of an original as of the date and year above first written.

HENDERSON COUNTY

BY:  (Seal)  
THOMAS H. THOMPSON, Chairman  
Henderson County Board of Commissioners

Attest: (County Seal)

  
Clerk to the Board

SIERRA NEVADA BREWING CO.

BY:   
KEN GROSSMAN President

Attest:

\_\_\_\_\_  
Secretary

WILD RIVER CORP.

BY:  KEN GROSSMAN, President

Attest:

\_\_\_\_\_  
Secretary

25. This Agreement is intended to benefit the parties hereto only, and therefore no third party shall have any rights under this Agreement, or be deemed a third party beneficiary.

26. This Agreement shall be effective after it has been duly executed by the parties, the effective date being the date above first written.

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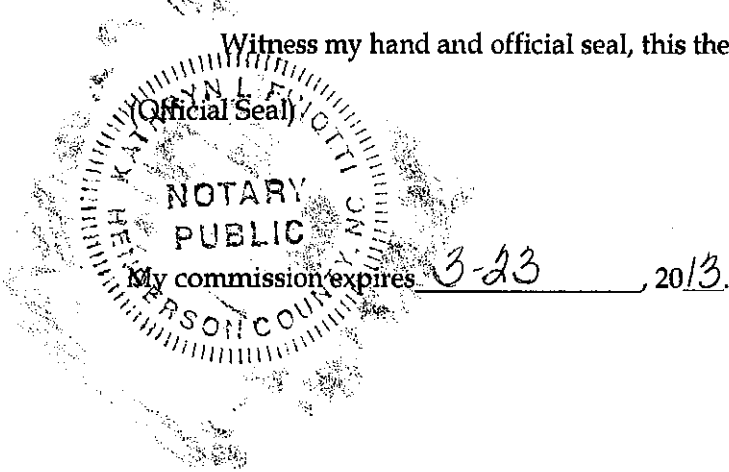
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STATE OF NORTH CAROLINA  
COUNTY OF HENDERSON

I, Kathryn L. Finotti, Notary Public for said County and State, certify that Teresa Wilson personally came before me this day and acknowledged that she is Clerk to the Board of Commissioners of Henderson County, a body politic and corporate and that by authority duly given and as the act of the corporation, the foregoing instrument was signed in its name by its Chairman of the Board of Commissioner, sealed with its corporate seal, and attested by herself as its Clerk.

Witness my hand and official seal, this the 8th day of February, 2012

Kathryn L. Finotti  
Notary Public



STATE OF CALIFORNIA  
COUNTY OF BUTTE

I, \_\_\_\_\_, Notary Public for said County and State, certify that Bill Bales, personally came before me this day and acknowledged that he is Secretary to SIERRA NEVADA BREWING CO., a California corporation authorized to do business in North Carolina, that by authority duly given and as the act of the corporation, the foregoing instrument was signed in its name by its President, , and attested by himself as its Secretary.

I certify under Penalty of Perjury under the laws of the State of California that the foregoing paragraph is true and correct.

Witness my hand and official seal, this the \_\_\_ day of \_\_\_\_\_, 20\_\_.

(Official Seal)

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

My Commission expires \_\_\_\_\_, 20\_\_.

=====  
STATE OF CALIFORNIA  
COUNTY OF BUTTE

I, \_\_\_\_\_, Notary Public for said County and State, certify that Bill Bales, personally came before me this day and acknowledged that he is Secretary to WILD RIVER CORP. a North Carolina corporation, that by authority duly given and as the act of the corporation, the foregoing instrument was signed in its name by its President, and attested by himself as its Secretary.

I certify under Penalty of Perjury under the laws of the State of California that the foregoing paragraph is true and correct.

Witness my hand and official seal, this the \_\_\_ day of \_\_\_\_\_, 20\_\_.

(Official Seal)

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

My Commission expires \_\_\_\_\_, 20\_\_.

=====

## APPENDIX A

### Time Schedule and Amount of Various Investments

During the period prior to 1 January 2014, the Company will complete the investment of the following amounts:

Real property improvements	\$25,000,000.00
New personal property and equipment	\$55,000,000.00

During or before the period from 1 January 2014 through 31 December 2014, the Company will complete the investment of the following amounts:

Real property improvements	\$0.00
New personal property and equipment	\$7,500,000.00

During or before the period from 1 January 2015 through 31 December 2015, the Company will complete the investment of the following amounts:

Real property improvements	\$5,000,000.00
New personal property and equipment	\$7,500,000.00

During or before the period from 1 January 2016 through 31 December 2016, the Company will complete the investment of the following amounts:

Real property improvements	\$0.00
New personal property and equipment	\$7,500,000.00

The total of all investment will be as follows:

Real property improvements	\$30,000,000.00
New personal property and equipment	\$77,500,000.00





# HENDERSON COUNTY BOARD OF COMMISSIONERS

1 Historic Courthouse Square, Suite 1  
Hendersonville, North Carolina 28792  
Phone 828-697-4808 • Fax: 828-692-9855  
www.hendersoncountync.org

THOMAS H. THOMPSON  
Chairman  
WILLIAM O'CONNOR  
Vice-Chairman

CHARLIE MESSER  
LARRY YOUNG  
J. MICHAEL EDNEY

## RESOLUTION OF THE BOARD OF COMMISSIONERS OF HENDERSON COUNTY

**WHEREAS**, Henderson County has not held an election under the alcoholic beverage control laws of North Carolina in its unincorporated areas in over fifty years; and

**WHEREAS**, the demographics and population of Henderson County have changed drastically since the last such election; and

**WHEREAS**, the Board of Commissioners of Henderson County has determined that it would be proper to offer the choices available under North Carolina alcoholic beverage to its citizenry.

**NOW, THEREFORE**, be it resolved that the Board of Commissioners of Henderson County hereby requests the Board of Elections of Henderson County to hold an alcoholic beverage election for the following:

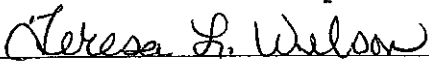
- a. Malt beverages under N.C. Gen. Stat. §18B-602(a)(1), (a)(2), (a)(3) and (a)(4).
- b. Unfortified wines under N.C. Gen. Stat. §18B-602(d)(1), (d)(2) and (d)(3).
- c. "ABC Stores", under N.C. Gen. Stat. §18B-602(g).
- d. Mixed beverages under N.C. Gen. Stat. §18B-602(h).

The Board further requests that this election be held on the date of the primary election in North Carolina, which date is more than sixty (60) days and not more than one hundred twenty (120) days from the date of this Resolution.

This the 6th day of February, 2012.

  
THOMAS H. THOMPSON, CHAIRMAN  
Henderson County Board of Commissioners

Attest:

  
Teresa L. Wilson, Clerk to the Board

**THIS LEASE DOES NOT BECOME EFFECTIVE UNTIL EXECUTED  
BY THE NORTH CAROLINA DEPARTMENT OF CORRECTION**

STATE OF NORTH CAROLINA

**LEASE AGREEMENT**

THIS LEASE AGREEMENT, made and entered into this the \_\_\_\_\_ day of \_\_\_\_\_, 2011, by and between **COUNTY of HENDERSON** hereinafter designated as Lessor, and the **STATE OF NORTH CAROLINA**, hereinafter designated as Lessee;

**WITNESSETH:**

WHEREAS, authority to approve and execute this lease agreement was delegated to the Department of Administration by resolution adopted by the Governor and Council of State on the 1<sup>st</sup> day of September, 1981; and

WHEREAS, the Department of Administration has delegated to this State agency the authority to execute this lease agreement by a memorandum dated the 17<sup>th</sup> day of April, 1985; and

NOW THEREFORE, in consideration of the rental hereinafter agreed to be paid and the terms and conditions hereinafter set forth, Lessor does hereby let and lease unto Lessee and Lessee hereby takes and leases from Lessor for and during the period of time and subject to the terms and conditions hereinafter set out certain space in the **City of Hendersonville, County of Henderson, North Carolina**, more particularly described as follows:

**Being +/- 4,228 net square feet of office space located at 1347 Spartanburg, Suite 3, Hendersonville, Henderson County, North Carolina.**

**(DEPARTMENT OF CORRECTION)**

THE TERMS AND CONDITIONS OF THIS LEASE AGREEMENT ARE AS FOLLOWS:

1. The term of this lease shall be for a period of three (3) Years commencing on the 1<sup>st</sup>. day of January, 2012 or as soon thereafter as the leased premises are ceded to the Lessee and terminating on the 31<sup>st</sup>. day of December 2014.
2. The Lessee shall pay to the Lessor as rental for said premises the sum of \$1.00 Dollars per term to be payable within fifteen (15) days from receipt of invoice in triplicate.

The Lessee agrees to pay the aforesaid rental to Lessor at the address specified, or, to such other address as the Lessor may designate by a notice in writing at least fifteen (15) days prior to the due date.

3. Lessor agrees to furnish to the Lessee, as a part of the consideration for this lease, the following services and utilities to the satisfaction of the Lessee.

- A Heating facilities, air conditioning facilities, adequate electrical facilities, adequate lighting fixtures and sockets, hot and cold water facilities, and adequate toilet facilities.
- B. Janitorial services and supplies including maintenance of lawns, parking areas, common areas and disposal of trash.
- C. All utilities except telephone.
- D. Parking as available.
- E. The lessor covenants that the leased premises are generally accessible to persons with disabilities. This shall include access into the premises from the parking areas (where applicable), into the premises via any common areas of the building and access to an accessible restroom.

4. During the lease term, the Lessor shall keep the leased premises in good repair and tenable condition, to the end that all facilities are kept in an operative condition. Maintenance shall include, but is not limited to furnishing and replacing electrical light fixture ballasts, air conditioning and ventilating equipment filter pads, if applicable, and broken glass. In case Lessor shall, after notice in writing from the Lessee in regard to a specified condition, fail, refuse, or neglect to correct said condition, or in the event of an emergency constituting a hazard to the health or safety of the Lessee's employees, property, or invitees, it shall then be lawful for the Lessee in addition to any other remedy the Lessee may have, to make such repair at its own cost and to invoice the amount thereof to the Lessor for reimbursement. The Lessor reserves the right to enter and inspect the leased premises, at reasonable times, and to make necessary repairs to the premises.

5. It is understood and agreed that Lessor shall, at the beginning of said lease term as hereinabove set forth, have the leased premises in a condition satisfactory to Lessee, including repairs, painting, partitioning, remodeling, plumbing and electrical wiring suitable for the purposes for which the leased premises will be used by Lessee.

6. The Lessee shall have the right during the existence of this lease, with the prior consent of the County Manager or designee, to make alterations, attach fixtures and equipment, and erect additions, structures or signs in or upon the leased premises. Such fixtures, additions, structures or signs so placed in or upon or attached to the leased premises under this lease or any prior lease of which this lease is an extension or renewal shall be and remain the property of the Lessee and may be removed therefrom by the Lessee prior to the termination of this lease or any renewal or extension thereof, or within a reasonable time thereafter. The Lessee shall have no duty to remove any improvement or fixture placed by it on the premises or to restore any portion of the premises altered by it. In the event Lessee elects to remove his improvements or fixtures and such removal causes damage or injury to the demised premises, Lessee will repair only to the extent of any such damage or injury.

7. If the said premises is destroyed by fire or other casualty without fault of the Lessee, and or partial destruction or damage by fire or other casualty without fault of the Lessee, so as to render the premises untenable in whole or in part, and during such period of repair the Lessee (with concurrence of the County) shall have the right to obtain similar office space by lease at the expense of Lessee with reimbursement from the County.

8. Lessor shall be liable to Lessee for any loss or damages suffered by Lessee which are a direct result of the failure of Lessor to perform an act required by this lease, and provided that Lessor could reasonably have complied with said requirement.

9. Upon termination of this lease, the Lessee will peaceably surrender the leased premises in as good order and condition as when received, reasonable use and wear and damage by fire, war, riots, insurrection, public calamity, by the elements, by act of God, or by circumstances over which Lessee had no control or for which Lessor is responsible pursuant to this lease, excepted.

10. The Lessor agrees that the Lessee, upon keeping and performing the covenants and agreements herein contained, shall at all times during the existence of this lease peaceably and quietly have, hold, and enjoy the leased premises free from the adverse claims of any person.

11. The failure of either party to insist in any instance upon strict performance of any of the terms and conditions herein set forth shall not be construed as a waiver of the same in any other instance. No modification of any provision hereof and no cancellation or surrender thereof shall be valid unless in writing and signed and agreed to by both parties.

12. Any hold over after the expiration of the said term or any extension thereof, shall be construed to be a tenancy from month to month, and shall otherwise be on the terms and conditions herein specified, so far as applicable; however, either party shall give not less than sixty (60) days written notice to terminate the tenancy.

13. The parties to this lease agree and understand that the continuation of this lease agreement for the term period set forth herein, or any extension or renewal thereof, is dependent upon and subject to the appropriation, allocation or availability of funds for this purpose to the agency of the Lessee responsible for payment of said rental. The parties to this lease also agree that in the event the agency of the Lessee or that body responsible for the appropriations of said funds, in its sole discretion, determines, in view of its total local office operations that available funding for the payment of rents are insufficient to continue the operation of its local offices on the premise leased herein, it may choose to terminate the lease agreement set forth herein by giving Lessor written notice of said termination, and the lease agreement shall terminate immediately without any further liability to Lessee.

14. All notices herein provided to be given, or which may be given by either party to the other, shall be deemed to have been fully given when made in writing and deposited in the United States mail, certified and postage prepaid and addressed as follows: To the Lessor at ~~100 N. King Street, Hendersonville, North Carolina 28792~~ and the Lessee at ~~2020 Yonkers Road, 4227 Mail Service Center, Raleigh, North Carolina 27699-4227~~. Nothing herein contained shall preclude the giving of such notice by personal service. The address to which notices shall be mailed as aforesaid to either party may be changed by written notice.

\* 1 HISTORIC COURTHOUSE SQUARE, SUITE 2

"N.C.G.S. § 133-32 and Executive Order 24 prohibit the offer to, or acceptance by, any State Employee of any gift from anyone with a contract with the State, or from any person seeking to do business with the State. By execution of any response in this procurement, you attest, for your entire organization and its employees or agents, that you are not aware that any such gift has been offered, accepted, or promised by any employees of your organization."

**[Remainder of page intentionally left blank; signatures on following pages]**

IN TESTIMONY WHEREOF, this lease has been executed by the parties hereto, in duplicate originals, as of the date first above written.

STATE OF NORTH CAROLINA

By: \_\_\_\_\_ (SEAL)  
TITLE: Chief Procurement & Budget Officer  
Barbara Baker

LESSOR:

\_\_\_\_\_ (SEAL)  
The County of Henderson  
Steve Wyatt, County Manager

ATTEST:

\_\_\_\_\_  
Secretary  
(CORPORATE SEAL)

STATE OF NORTH CAROLINA

COUNTY OF \_\_\_\_\_

I, \_\_\_\_\_, a Notary Public in and for the County and State aforesaid, do hereby certify that **Steve Wyatt**, personally came before me this day and acknowledged that he is the **Henderson County Manager**, and that by authority and given as an act of and acknowledged the due execution of the foregoing instrument in its name.

WITNESS my hand and Notarial Seal, this the \_\_\_\_\_ day of \_\_\_\_\_, 2011.

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

My Commission Expires:

\_\_\_\_\_



**STATE OF NORTH CAROLINA  
COUNTY OF HENDERSON**

**AGREEMENT FOR PARTICIPATION IN THE  
STATEWIDE MISDEMEANANT CONFINEMENT PROGRAM**

**THIS AGREEMENT** shall be effective the 1st day of January, 2012, by and between the North Carolina Department of Public Safety and Henderson County, a body politic organized and existing under the laws of the State of North Carolina (hereinafter referred to as "County") and Sheriff Rick Davis, the Sheriff of Henderson County.

**WITNESSETH:**

WHEREAS, the Statewide Misdemeanant Confinement Program (hereinafter referred to as "Program") was created, pursuant to G.S. § 148-32.1(b2), to provide housing in local confinement facilities of misdemeanants serving sentences that impose periods of confinement of more than 90 days and up to 180 days, except for those sentenced for an impaired driving offense; and

WHEREAS, all misdemeanants serving periods of confinement of more than 90 days and up to 180 days, except for those serving a sentence for an impaired driving offense, shall be committed for the term designated by the court to confinement pursuant to the Program as a matter of law pursuant to G.S. § 15A-1352(e); and

WHEREAS, pursuant to G.S. 148-32.1 (b1) and (b2) and Section 7.(f) of Session Law 2011-192, the Department of Public Safety has contracted with the North Carolina Sheriffs' Association, Inc. to implement the Program and to establish the terms and conditions for the operation thereof consistent with The Justice Reinvestment Act of 2011 as enacted in Session Law 2011-192, along with any subsequent amendments thereto; and

WHEREAS, counties, through their respective Sheriffs, can voluntarily agree to house misdemeanants pursuant to the Program by entering into this written agreement with the Department of Public Safety pursuant to G.S. § 148-32.1(b2); and

WHEREAS, the Statewide Misdemeanant Confinement Fund (hereinafter referred to as "Fund"), created pursuant to G.S. § 148-10.4, shall provide reimbursement to counties for expenses incurred for housing misdemeanants under the Program, including the care, supervision, transportation and other related expenses of those misdemeanants;

NOW THEREFORE, in consideration of the terms and conditions set forth herein, the parties agree as follows:



1. **PARTICIPATION.**

- a. The County and the Sheriff voluntarily agree to participate in the Program and for the Sheriff to provide housing of misdemeanants sentenced pursuant to the Program, including the care, supervision, and transportation of those misdemeanants.
- b. The Sheriff will notify the Program in writing of the number of misdemeanants that the County and the Sheriff agree to accept. This number may be amended from time to time upon written notification from the Sheriff to the Program, provided however that a reduction in the number of misdemeanants to be housed by the Sheriff shall only apply to new admissions and shall not require the Program to remove misdemeanants previously assigned to the Sheriff for housing pursuant to the Program.
- c. Participation of the County and the Sheriff in the Program shall be upon the terms and conditions established by the Program and as amended from time to time, provided however that any changes in the terms and conditions of the Program shall not apply to misdemeanants assigned to the Sheriff before the effective date of the change, unless the change is agreed to by the Sheriff. Additionally, the Sheriff has the right to decline to accept assignment of any additional misdemeanants subsequent to the effective date of any change to the terms and conditions of the Program.

2. **TERMINATION.**

This Agreement shall remain in effect until terminated by the County, by the Sheriff or by the Department of Public Safety.

- a. This Agreement may be terminated by the County or by the Sheriff at any time, such termination to be effective no sooner than the date upon which the Program and the Department of Public Safety both receive the notice of termination in writing from the County or from the Sheriff via the United States Postal Service, by certified mail, return receipt requested, or by personal delivery. The termination of this Agreement by the County or by the Sheriff shall terminate the County's agreement and terminate the Sheriff's agreement to accept any additional misdemeanants after the effective date of the termination, but shall not relieve the County or the Sheriff of the responsibility for misdemeanants accepted by the Sheriff prior to the effective date of the termination of this agreement.
- b. This Agreement may be terminated by the Department of Public Safety at any time, such termination to be effective no sooner than the date upon which the County, the Sheriff and the Program all receive the notice of termination in writing from the Department of Public Safety via the United States Postal Service, by certified mail, return receipt requested, or by personal delivery to both the County, to the Sheriff and to the Program. The termination of this



Agreement by the Department of Public Safety shall not relieve the Department of Public Safety or the Program of the reimbursement responsibilities or other responsibilities for misdemeanants accepted by the Sheriff prior to the effective date of the termination of this Agreement.

**3. REIMBURSEMENT BY DEPARTMENT OF PUBLIC SAFETY.**

The Department of Public Safety agrees to promptly transfer funds from the Fund to the Program, as requested by the Program, for reimbursement to the County for the authorized costs under the Program of housing misdemeanants by the Sheriff, including the care, supervision, and transportation of those misdemeanants, pursuant to G.S. § 148-10.4(d)(1).

**4. GOVERNING LAW.**

This Agreement shall be governed by the laws of the State of North Carolina.

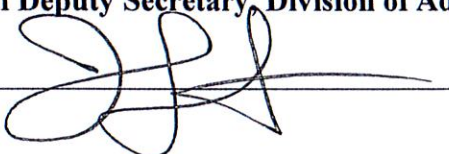
**5. ENTIRE AGREEMENT.**

The parties agree that this document constitutes the entire agreement between the parties and may only be modified by a written mutual agreement signed by the County, the Sheriff and the Department of Public Safety.

This Agreement is executed in triplicate originals, with one original being retained by each party.

**NORTH CAROLINA DEPARTMENT OF PUBLIC SAFETY  
SECRETARY REUBEN F. YOUNG**

**BY: Jennie Lancaster  
Chief Deputy Secretary, Division of Adult Correction**

Signature:  Date: 1-3-2012

**FOR THE COUNTY**


**FOR THE SHERIFF**

**BY:**  
Printed Name: THOMAS H. THOMPSON

**BY:**  
Printed Name: \_\_\_\_\_

Title: Chairman

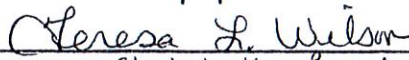
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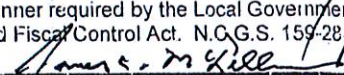
Signature: 

Signature: \_\_\_\_\_

Date: 2/8/2012

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

  
ATTEST: Clerk to the Board Page 3 of 3

**PREAUDIT CERTIFICATE**  
This instrument has been preaudited in the manner required by the Local Government Budget and Fiscal Control Act, N.C.G.S. 159-28(a)  
  
James M. Hill  
Henderson County Finance Director



**THIS LEASE DOES NOT BECOME EFFECTIVE UNTIL EXECUTED  
BY THE NORTH CAROLINA DEPARTMENT OF CORRECTION**

STATE OF NORTH CAROLINA

**LEASE AGREEMENT**

THIS LEASE AGREEMENT, made and entered into this the 6<sup>th</sup> day of February, 2012, by and between **COUNTY of HENDERSON** hereinafter designated as Lessor, and the **STATE OF NORTH CAROLINA**, hereinafter designated as Lessee;

**WITNESSETH:**

WHEREAS, authority to approve and execute this lease agreement was delegated to the Department of Administration by resolution adopted by the Governor and Council of State on the 1<sup>st</sup> day of September, 1981; and

WHEREAS, the Department of Administration has delegated to this State agency the authority to execute this lease agreement by a memorandum dated the 17<sup>th</sup> day of April, 1985; and

NOW THEREFORE, in consideration of the rental hereinafter agreed to be paid and the terms and conditions hereinafter set forth, Lessor does hereby let and lease unto Lessee and Lessee hereby takes and leases from Lessor for and during the period of time and subject to the terms and conditions hereinafter set out certain space in the **City of Hendersonville, County of Henderson, North Carolina**, more particularly described as follows:

**Being +/- 4,228 net square feet of office space located at 1347 Spartanburg, Suite 3, Hendersonville, Henderson County, North Carolina.**

**(DEPARTMENT OF CORRECTION)**

THE TERMS AND CONDITIONS OF THIS LEASE AGREEMENT ARE AS FOLLOWS:

1. The term of this lease shall be for a period of three **(3) Years** commencing on the **1<sup>st</sup> day of January, 2012** or as soon thereafter as the leased premises are ceded to the Lessee and terminating on the **31<sup>st</sup> day of December 2014**.

2. The Lessee shall pay to the Lessor as rental for said premises the sum of **\$1.00** Dollars per term to be payable within fifteen (15) days from receipt of invoice in triplicate.

The Lessee agrees to pay the aforesaid rental to Lessor at the address specified, or, to such other address as the Lessor may designate by a notice in writing at least fifteen (15) days prior to the due date.

3. Lessor agrees to furnish to the Lessee, as a part of the consideration for this lease, the following services and utilities to the satisfaction of the Lessee.

- A Heating facilities, air conditioning facilities, adequate electrical facilities, adequate lighting fixtures and sockets, hot and cold water facilities, and adequate toilet facilities.
- B. Janitorial services and supplies including maintenance of lawns, parking areas, common areas and disposal of trash.
- C. All utilities except telephone.
- D. Parking as available.
- E. The lessor covenants that the leased premises are generally accessible to persons with disabilities. This shall include access into the premises from the parking areas (where applicable), into the premises via any common areas of the building and access to an accessible restroom.

4. During the lease term, the Lessor shall keep the leased premises in good repair and tenable condition, to the end that all facilities are kept in an operative condition. Maintenance shall include, but is not limited to furnishing and replacing electrical light fixture ballasts, air conditioning and ventilating equipment filter pads, if applicable, and broken glass. In case Lessor shall, after notice in writing from the Lessee in regard to a specified condition, fail, refuse, or neglect to correct said condition, or in the event of an emergency constituting a hazard to the health or safety of the Lessee's employees, property, or invitees, it shall then be lawful for the Lessee in addition to any other remedy the Lessee may have, to make such repair at its own cost and to invoice the amount thereof to the Lessor for reimbursement. The Lessor reserves the right to enter and inspect the leased premises, at reasonable times, and to make necessary repairs to the premises.

5. It is understood and agreed that Lessor shall, at the beginning of said lease term as hereinabove set forth, have the leased premises in a condition satisfactory to Lessee, including repairs, painting, partitioning, remodeling, plumbing and electrical wiring suitable for the purposes for which the leased premises will be used by Lessee.

6. The Lessee shall have the right during the existence of this lease, with the prior consent of the County Manager or designee, to make alterations, attach fixtures and equipment, and erect additions, structures or signs in or upon the leased premises. Such fixtures, additions, structures or signs so placed in or upon or attached to the leased premises under this lease or any prior lease of which this lease is an extension or renewal shall be and remain the property of the Lessee and may be removed therefrom by the Lessee prior to the termination of this lease or any renewal or extension thereof, or within a reasonable time thereafter. The Lessee shall have no duty to remove any improvement or fixture placed by it on the premises or to restore any portion of the premises altered by it. In the event Lessee elects to remove his improvements or fixtures and such removal causes damage or injury to the demised premises, Lessee will repair only to the extent of any such damage or injury.

7. If the said premises is destroyed by fire or other casualty without fault of the Lessee, and or partial destruction or damage by fire or other casualty without fault of the Lessee, so as to render the premises untenable in whole or in part, and during such period of repair the Lessee (with concurrence of the County) shall have the right to obtain similar office space by lease at the expense of Lessee with reimbursement from the County.



8. Lessor shall be liable to Lessee for any loss or damages suffered by Lessee which are a direct result of the failure of Lessor to perform an act required by this lease, and provided that Lessor could reasonably have complied with said requirement.

9. Upon termination of this lease, the Lessee will peaceably surrender the leased premises in as good order and condition as when received, reasonable use and wear and damage by fire, war, riots, insurrection, public calamity, by the elements, by act of God, or by circumstances over which Lessee had no control or for which Lessor is responsible pursuant to this lease, excepted.

10. The Lessor agrees that the Lessee, upon keeping and performing the covenants and agreements herein contained, shall at all times during the existence of this lease peaceably and quietly have, hold, and enjoy the leased premises free from the adverse claims of any person.

11. The failure of either party to insist in any instance upon strict performance of any of the terms and conditions herein set forth shall not be construed as a waiver of the same in any other instance. No modification of any provision hereof and no cancellation or surrender thereof shall be valid unless in writing and signed and agreed to by both parties.

12. Any hold over after the expiration of the said term or any extension thereof, shall be construed to be a tenancy from month to month, and shall otherwise be on the terms and conditions herein specified, so far as applicable; however, either party shall give not less than sixty (60) days written notice to terminate the tenancy.

13. The parties to this lease agree and understand that the continuation of this lease agreement for the term period set forth herein, or any extension or renewal thereof, is dependent upon and subject to the appropriation, allocation or availability of funds for this purpose to the agency of the Lessee responsible for payment of said rental. The parties to this lease also agree that in the event the agency of the Lessee or that body responsible for the appropriations of said funds, in its sole discretion, determines, in view of its total local office operations that available funding for the payment of rents are insufficient to continue the operation of its local offices on the premise leased herein, it may choose to terminate the lease agreement set forth herein by giving Lessor written notice of said termination, and the lease agreement shall terminate immediately without any further liability to Lessee.

14. All notices herein provided to be given, or which may be given by either party to the other, shall be deemed to have been fully given when made in writing and deposited in the United States mail, certified and postage prepaid and addressed as follows: To the Lessor at ~~100 N. King Street, Hendersonville, North Carolina 28792~~ and the Lessee at **2020 Yonkers Road, 4227 Mail Service Center, Raleigh, North Carolina 27699-4227**. Nothing herein contained shall preclude the giving of such notice by personal service. The address to which notices shall be mailed as aforesaid to either party may be changed by written notice.

*\* 1 HISTORIC COURTHOUSE SQUARE, SUITE 2*

“N.C.G.S. § 133-32 and Executive Order 24 prohibit the offer to, or acceptance by, any State Employee of any gift from anyone with a contract with the State, or from any person seeking to do business with the State. By execution of any response in this procurement, you attest, for your entire organization and its employees or agents, that you are not aware that any such gift has been offered, accepted, or promised by any employees of your organization.”

**[Remainder of page intentionally left blank; signatures on following pages]**

IN TESTIMONY WHEREOF, this lease has been executed by the parties hereto, in duplicate originals, as of the date first above written.


STATE OF NORTH CAROLINA

By: \_\_\_\_\_ (SEAL)  
TITLE: Chief Procurement & Budget Officer  
Barbara Baker

LESSOR:

 \_\_\_\_\_ (SEAL)  
The County of Henderson  
Steve Wyatt, County Manager

ATTEST:

  
Secretary  
(CORPORATE SEAL)

STATE OF NORTH CAROLINA

COUNTY OF Henderson

I, Kathryn L. Finotti, a Notary Public in and for the County and State aforesaid, do hereby certify that **Steve Wyatt**, personally came before me this day and acknowledged that he is the **Henderson County Manager**, and that by authority and given as an act of and acknowledged the due execution of the foregoing instrument in its name.

WITNESS my hand and Notarial Seal, this the 16th day of February, 2012

Kathryn L. Finotti  
Notary Public

My Commission Expires:

3-23-13

