

MINUTES

STATE OF NORTH CAROLINA
COUNTY OF HENDERSON

BOARD OF COMMISSIONERS
JULY 7, 1997

The Henderson County Board of Commissioners met for a regularly scheduled meeting at 7:00 p.m. in the Commissioners' Conference Room of the Henderson County Office Building.

Those present were: Chairman Bob Eklund, Vice-Chairman Grady Hawkins, Commissioner Vollie G. Good, Commissioner Renee Kumor, Commissioner Don Ward, County Manager David E. Nicholson, Assistant County Manager/Staff Attorney Angela M. Skerrett, County Attorney Don H. Elkins, and Clerk to the Board Elizabeth W. Corn.

Also present were: Finance Director J. Carey McLelland and Planning Director Matt Matteson.

CALL TO ORDER/WELCOME

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

PLEDGE OF ALLEGIANCE

Commissioner Good led the pledge to the American Flag.

INVOCATION

David Nicholson gave the invocation.

DISCUSSION/ADJUSTMENT OF AGENDA

David Nicholson added four additional sets of minutes to Review of Minutes under the Consent Agenda: June 9, June 10, June 16, and June 17, 1997.

He also added "M" Solid Waste Bids, "N" Building Permit Fees, and "O" School Board Budget.

Mr. Nicholson deleted discussion item "H" Parking Lot Lease.

CONSENT AGENDA

Commissioner Kumor made the motion to approve the consent agenda. All voted in favor and the motion carried.

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The Consent Agenda consisted of the following:

Review/approval of Minutes

Minutes were presented for the Board's approval of the following meetings: June 3, June 9, June 10, June 16, and June 17, 1997.

Notification of Vacancies

The Board was notified of the following vacancies which will appear under Nominations on the next agenda:

1. Nursing/Adult Care Home Community Advisory Committee - 3 vac.
2. Community Child Protection Team - 1 vac.
3. Child Fatality Prevention Team - 2 vac.

Contact Local Legislators re: Support to Renovation and Expansion of the Institute of Government (Knapp Building)

In a letter from Mike Smith of the Institute of Government dated June 24, 1997, local governing bodies were encouraged to again contact their local legislators encouraging them to support the capital funding request of \$16.1 million for renovation and expansion at the Institute. At the Board of Commissioners meeting on February 19, 1997, they adopted a resolution to that effect.

Road Petitions

The Board has received one road petition for addition to the State Maintenance System: Summerwind Drive. It has been the practice of this Board to accept road petitions and forward them to NC Dept. of Transportation for their review.

INFORMAL PUBLIC INPUT

1. Gary Jones - Mr. Jones voiced his interest in the county adopting a noise ordinance. His main concern is the noise from motor vehicles and discharging of firearms in the neighborhood.

Mr. Jones expressed need for a red light at the intersection of Upward Road and Allen Road. He also expressed need for four way stop signs at the intersection of Crest Road and Old Spartanburg Road, at Blue Ridge Vol. Fire Department. Mr. Jones stated that there had been several accidents at each of these intersections in the past year.

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2. Gene Clary - Ms. Clary is a resident of Price Road. She spoke in opposition of the cellular tower that has gone up in her back yard recently. She stated that the red light flashes right in her bedroom window.

3. Dr. James C. Nourse - Dr. Nourse requested that he and his wife be allowed to speak to this issue together.

4. Judith R. Nourse - Dr. & Mrs. Nourse also spoke in opposition of the recently constructed cellular tower. They and Ms. Clary questioned why adjacent property owners weren't notified. Dr. Nourse spoke of electromagnetic fields and radiation and the potential for danger to human health. Dr. Nourse also addressed the potential for devaluation of property. Dr. Nourse specifically asked why, when a stay against further construction was issued, why wasn't the stay observed. He and his wife stated that the pace of construction was accelerated following the stay.

Commissioner Hawkins questioned Mr. Matteson as to when this case is scheduled to be heard by the Zoning Board of Adjustment? Mr. Matteson stated that it would be heard on July 23 at 4:00 p.m. in room #140 of the Administration Building.

Mrs. Nourse produced a copy of the building permit application stating that the final electrical inspection was done on June 19. She stated that she witnessed the light being installed on the tower yesterday, July 6. She also had a copy of the final building inspection that was done on June 10. The tower was actually built this past week-end, Saturday-July 5 and Sunday-July 6. She questioned whether there was ever an inspection for footings and foundations as there was none listed on the copies she had. A neighbor (adjoining tower property) informed the Nourses that the footings were actually poured late during the night, early in the spring (before June). The neighbor was aware of this because their sleep was disturbed until midnight.

Commissioner Good asked Mr. Nicholson to get copies of the same documents that Dr. and Mrs. Nourse had for all Commissioners.

Assistant County Manager - Statement

Ms. Skerrett stated that the tower issue arose while she was Acting County Manager. She became aware of the situation last week. Upon finding out that the tower was being constructed in a residential area and that there were concerns in the community, she contacted

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the zoning administrator to issue the stay. The tower company chose to proceed in spite of the stay. They questioned the County's authority to issue the stay. She was notified at about 4:30 on July 3. Rather than calling the property owners, she took the time to draft a response stating that the County had received the notice that they were proceeding ahead. Her response advised them that they were proceeding at their own risk. Between 4:30 and 5:00 she felt that that was about all she could do to again try to preserve the property owners' rights of appeal. Because the tower began pursuant to a zoning permit that was issued by the County, there is no provision for any zoning permit that gets issued for notice to the landowners. It is an administrative thing. The Zoning Administrator has, for a couple of years now, interpreted cellular towers to be public utility stations, because the zoning ordinance doesn't directly address cellular towers. He felt that that was the best fit.

Ms. Skerrett stated that the property owners have filed their appeal. The appeal will be heard on July 23. She feels that the County has taken all the steps that they could have administratively to preserve the right of appeal. The tower company is clearly on notice that anything they do until the Zoning Board of Adjustment can rule on the matter is at their own risk. She has spoken with Mr. Gasky today and with the Attorney that represents the appellants. She has shared all the documentation that she has. It is her understanding that their Attorney was going to try to get a temporary restraining order from a Judge today. She has not heard whether that was successful.

This falls to a determination by the Zoning Board of Adjustment until the tower amendments to the Zoning Ordinance that are before this Board can be considered. There is a Public Hearing scheduled for August 4 to specifically address cellular towers in zoned areas. The amendments propose to prohibit them in residential areas and allow them with site conditions in industrial or commercial areas.

Commissioner Kumor asked Ms. Skerrett what it would take to reactivate the moratorium on cellular towers. Ms. Skerrett stated that if the Board did so pursuant to police power it would require a unanimous vote of the Board of Commissioners.

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Following much discussion on the issue, Commissioner Kumor made the motion to resurrect the moratorium on cellular towers for at least another 90 days. A vote was taken and the motion carried unanimously.

Commissioner Ward requested a letter be written to Mr. Jay Swain to address Mr. Jones' concerns regarding the Allen Road and Upward Road intersection and the intersection at Blue Ridge Fire Department, to make them aware of the situations. Mr. Nicholson stated that he would write a letter.

PUBLIC HEARING - Henderson County Public Safety Telephone Ordinance, An Ordinance to Establish Countywide 911 Service

Commissioner Kumor made the motion for the Board to go into Public Hearing. All voted in favor and the motion carried.

Public Input

There was none.

Angela Skerrett informed the Board that this Public Hearing is held as required by NCGS 62A to impose a surcharge on telephone service to pay for the capital cost associated with the new 911 center. The Draft Ordinance imposes a monthly \$2.50 surcharge effective November 10, 1997 through November 9, 1998. After November 9, 1998 the surcharge would be reduced to 55 cents per month.

Every outgoing phone line would be assessed this fee.

Commissioner Kumor made the motion for the Board to go out of Public Hearing. All voted in favor and the motion carried.

Following some discussion, Commissioner Hawkins made the motion to adopt this Ordinance. All voted in favor and the motion carried.

UPDATE ON E-911 RELOCATION PROJECT

Bill Blalock updated the Board on the status of the E-911 project stating that the proposed cut-over date will be November 19, 1997.

E-911 RELOCATION PROJECT GENERATOR BIDS

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As a part of the E-911 Relocation Project, it will be necessary to install backup generators at both the 100 North King Street location and at the old (historic) Courthouse (where the radio transmission tower will be constructed). The generators and related equipment were put out to bid and were received on July 2, 1997.

The bid tabulation sheet indicated bids that were received. The bids were discussed. Unfortunately neither bidder completely complied with the bidding requirements. Therefore staff recommended that all bids be rejected and that the generators be re-bid.

Following much discussion, Commissioner Ward made the motion to reject the bids and to request Mr. Nicholson to check on noise levels of these generators/engines. All voted in favor and the motion carried.

Mr. Blalock expressed his feeling that Henderson County needs an integrated telecommunications software/telephone plan.

BOARD OF EDUCATION - SECOND LEVEL FACILITY STUDY

The Henderson County Board of Public Education has requested that the Board of Commissioners provide funding to complete a comprehensive second level facility study. They have selected MGT of America to prepare this study at a cost of \$68,600.00.

David Nicholson recommended that the funds come from the School Capital Reserve Funds.

Commissioner Hawkins made the motion to approve the request with the funds to be taken from the School Capital Reserve Funds. A vote was taken and the motion passed four to one with Commissioner Good voting nay.

SET A PUBLIC HEARING FOR TEXT AMENDMENTS TO THE HENDERSON COUNTY WATER SUPPLY WATERSHED ORDINANCE

In February 1997, the North Carolina Environmental Management Commission amended the boundaries of the Upper French Broad River Watershed (WS-IV Classification) in response to a resolution by the Board of Commissioners. The map amendments have been conveyed to the County via a small scale map (1:115,000) showing detail

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insufficient for local enforcement. The Henderson County Water Supply Watershed Ordinance does not have a provision for the Board to approve any maps, relying only on State issued maps. The Ordinance must be modified to allow map interpolation and formal Board approval.

At their meeting on June 24, 1997, the Henderson County Planning Board voted to send the proposed amendments forward with a **favorable recommendation**. A Public Hearing was proposed for the meeting of August 4, 1997.

Mr. Matteson explained that the request is to amend the text to adopt a large scale map.

Commissioner Kumor made the motion to set the Public Hearing for August 4 at 7:00 p.m. All voted in favor and the motion carried.

PARKS AND RECREATION DEPARTMENT ISSUES

Commissioner Don Ward had requested that the Board of Commissioners review the fee structure for the Parks and Recreation Department. He also would like for the Board to consider granting park development grants to outside organizations such as the East Flat Rock Community Club.

Mr. Nicholson presented a list of current recreation fees with proposed fees, stating that the proposed fees are what were included in the current budget revenues for parks and recreation.

There was much discussion regarding the need for parks and recreation programs to be self supporting. Commissioner Ward felt the need for a higher increase on the fees for some of the programs, especially some of the adult programs.

Mr. Nicholson stated that staff will create a chart on each of the adult programs and list the revenues/expenses associated with the program.

There was some favorable discussion regarding grants for outside organizations. Many details would have to be worked out.

No action was taken. The Board will await data on the adult programs.

AMENDMENTS TO RESTRICTIVE COVENANTS FOR APPLELAND BUSINESS PARK

Angela Skerrett reminded the Board that staff has been discussing options to close out Appleland Business Park with the Board. At the last Board meeting, the Board authorized staff to divide the remaining lot in the Park, Lot 5, into Lot 5 consisting of approximately 16 acres and a Lot 5A abutting Upward Road consisting of approximately 6 acres, and to place the new Lot 5A on the market using the sealed bid process. The Board has also indicated that the new Lot 5A should be reclassified from Industrial to an Office and Institutional classification. In order to do this, the Restrictive Covenants must be amended.

To amend the covenants, the Board must give all persons owning property within the park written notice by certified mail of the proposed changes at least thirty days in advance of taking action. If the Board is desirous of considering the proposed amendment, it would be appropriate to set a public hearing to consider them at the August 20 meeting, and to direct staff to notify all owners within Appleland Business Park of the proposed amendments in accordance with Paragraph 7(B)(5) of the Restrictive Covenants.

Ms. Skerrett passed around an amended map of the proposed Lot 5 and Lot 5A.

Commissioner Hawkins made the motion to set a Public Hearing for August 20 at 9:00 a.m. and to direct staff to notify the property owners in Appleland Business Park. All voted in favor and the motion carried.

TO PRESENT CONTRACT FROM CAROLINA TEXTILES RECYCLING

The contract from Carolina Textile Recycling was presented for review as well as an attached resolution. Ms. Skerrett informed the Board that pursuant to this contract, Carolina Textile Recycling will provide the County with a trailer for collection of used textiles, transport this trailer to their facility in South Carolina and pay the County market price for the materials (\$100/ton minimum) collected.

The public has aggressively participated in this program, depositing 6,820 lbs. of textiles in the trailer at the Landfill for recycling during the first month of operation. Projected

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annual revenues, based upon the first month's collections, would be \$4,092. This program is also diverting that material from being landfilled (transferred).

Commissioner Hawkins made the motion to approve the Resolution. All voted in favor and the motion carried.

PARKING LOT LEASE (Main Street/Allen Street)

This item had been deleted from the agenda.

OFFERS TO PURCHASE/FORECLOSED PROPERTIES (x3)

Don Elkins presented three separate offers to the Board for consideration and action as follows:

#1 Proposed Bidder - Mack H. Aiken offered \$250.00 (first offer was \$150.00). This is his second offer on this piece of property in Laurel Park. No upset bids were received.

Commissioner Ward made the motion to reject the bid of \$250. A vote was taken and the motion carried four to one with Commissioner Kumor voting nay.

#2 Proposed Bidder - Arezki Madji offered \$600.00 (first offer was \$400.00). This offer was made last September. Mr. Madji is a Florida resident, bidding on this property in Marshall Ridge Subdivision (Edneyville). This is his second bid also and has not been advertised for upset bids.

Mr. Elkins could not locate his file on this one and suggested that the Board make a preliminary acceptance and he will get the research material and present at an up-coming meeting for approval or denial. By consensus the Board agreed.

#3 Proposed Bidder - Joroen & Lori Renirie offered \$200.00. This is the first offer on property located at 109 Briarwood Lane (Druid Hills Subdivision). This has not been advertised for upset bids.

Commissioner Hawkins made the motion "The Board proposed to receive the foregoing offer and the Clerk is directed to cause legal notice thereof to be published one time in the Times-News, Hendersonville, NC. In the event that an increased bid is filed, the Clerk is

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directed to re-advertise as required by law, and to repeat this procedure until ten days have elapsed from date of last publication without a qualifying upset bid having been received." All voted in favor and the motion carried.

UPDATE ON PENDING ISSUES

1. Hospital Reorganization

Mr. Nicholson and Ms. Skerrett will meet with an Attorney in Raleigh this Friday. They are beginning to review the detailed documents. They will have something ready to present to the Board by the end of the month.

2. WNJA Sewer Project

Mr. Nicholson informed the Board that two sites are being considered for the sewer project: #1. Behind the Edneyville Fire Department and #2. is at Lewis Creek. Mr. Nicholson hopes to have an answer on this one very shortly.

3. Voting delegate for NCACC Conference August 14-17/Greensboro

By consensus Chairman Eklund was named as voting delegate for Henderson County at the NCACC Conference in Greensboro.

4. Blue Ridge Community College Bond Request

David Nicholson passed around a hand-out listing six (6) debt service options regarding the school bonds and the BRCC bond. The Board of Commissioners had asked how the sale of School Bonds as well as the sale of BRCC Bonds would affect the 15% debt ratio that the bond rating agencies like to see governments not exceed.

Mr. Nicholson also passed around a copy of a Resolution the Board of Public Education approved on June 30, 1997, requesting Henderson County to provide the funds required for the improvements to school facilities and to issue bonds of the County to raise the required funds and to submit the question of issuing bonds to accomplish such financing to the voters of the County of Henderson.

Following much discussion, Commissioner Kumor made the motion to put both bonds together for the fall referendum, \$46.5 million for the schools and \$8 million for the BRCC. A vote was taken and the motion carried three to two with Commissioners Hawkins and Ward voting nay.

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There will be two separate bond issues on the same bond referendum planned for November.

IMPORTANT DATES

The calendar was reviewed.

NOMINATIONS

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

- 1. Western Carolina Community Action Board of Directors - 1 vac.**
There were no nominations at this time so this item was rolled to the next meeting.
- 2. Youth Advisory Board - 2 vacancies.**
There were no nominations at this time. Anne Whitmire was nominated at an earlier meeting. This item was rolled to the next meeting.
- 3. Henderson County Board of Health - 1 vacancy.**
Pam Miller and Argie Taylor were both nominated at previous meetings. There were no additional nominations at this time. The Clerk polled the Board and Argie Taylor got the appointment, three of five votes.
- 4. Land Of Sky Regional Council Advisory Council on Aging - 1 vac.**
There were no nominations at this time so this item was rolled to the next meeting.
- 5. Henderson County Child Fatality Prevention Team - 2 vacancies.**
There were no nominations at this time so this item was rolled to the next meeting. There are actually 3 vacancies now since Eddie Watkins resigned, he was serving a dual role.
- 6. Jail Committee - 4 vacancies.**
The Clerk passed around copies of appointment applications received from persons interested in serving on this committee. There were no nominations at this time so this item was rolled to the next meeting.

SOLID WASTE BIDS

David Nicholson requested the following action concerning several solid waste bids:

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1. Reject Transfer Station Bids.

He reviewed the bid tabulation from the bid opening on June 25, 1997 for the Transfer Station. There were several omissions for the lowest bidder's proposal and staff has also determined that additional design changes should be made to the project. He recommended that these bids be rejected and that we rebid this project.

2. Authorization to Re-Advertise.

If three bids are not received at the next opening, staff requested the authority to re-advertise.

3. Authorization to Bid - Landfill Equipment and to waive the payment and performance bonds on this equipment.

- A. Front-end Loader This will be used in the white goods area and purchased with state white good's funds. Our current loader will be utilized In the transfer station.
- B. Track Hoe We have been renting a track hoe for several years at the Landfill and our current lease is expiring. We are requesting permission to issue request for proposals for a used track hoe. We will have the need for a track hoe even after the Landfill is closed out.
- C. Roll Off Truck This truck will be used to pick up 20 yard household boxes and move them into the transfer station.
- D. Scales Currently, traffic flow is a problem at this facility. Staff requested permission to purchase an additional set Of scales. They would not be installed until after the transfer station is constructed.

Commissioner Kumor made the motion to approve the above requests. A vote was taken and the motion carried four to one with Commissioner Ward voting nay.

BUILDING PERMIT FEES

David Nicholson reminded the Board that during budget deliberations, the Board of Commissioners reviewed the building inspection fees. He presented a complete listing of these fees. The list reviewed during budget time was a partial list. Staff requested the Commissioners give final approval for these permits fees at this time.

Staff's recommendation is that these fees do not apply to permits that were applied for but not issued prior to July 1, 1997.

Commissioner Ward made the motion to approve the request. All voted in favor and the motion carried.

SCHOOL BOARD BUDGET

David Nicholson presented a request from the Henderson County Board of Public Education for use of the additional \$200,000.00 which was set aside by the Board of Commissioners during this year's budget deliberations.

The Board of Public Education has requested that \$130,000.00 be appropriated as Capital and \$70,000.00 into Current Expense. A letter from Dr. Lunsford with the breakdown of the use of these funds was reviewed. The \$70,000 for current expense is for maintenance personnel.

Upon reviewing the Henderson County Board of Public Education Special Maintenance Allocation for Fiscal Year ending June 30, 1998, the Commissioners discovered items that were not preventative maintenance. The Board of Commissioners had specified "preventative maintenance" in discussions with the Board of Education.

It was the consensus of the Board to approve the request, subject to Mr. Nicholson following up with the School Board on the issue of the preventative maintenance items.

CLOSED SESSION

Commissioner Ward made the motion for the Board to go into Closed Session as allowed under NCGS 143-318.11 for the following reasons:

1. (a) (3) To consult with an attorney employed or retained by the public body in order to preserve the attorney-client privilege between the attorney and the public body, which privilege is hereby

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acknowledged and to discuss the case of Hollingsworth versus Henderson County, et. al. To consult with an attorney employed or retained by the public body in order to consider and give instructions to the attorney with respect to a claim.

2. (a)(4) To discuss matters relating to the location or expansion of industries or other businesses in the area served by the public body.

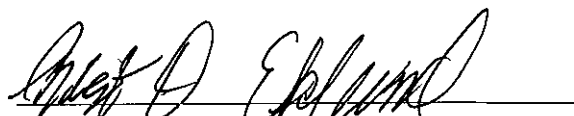
3. (a)(6) To consider the qualifications, competence, performance, character, fitness, conditions of appointment, or conditions of initial employment of an individual public officer or employee or prospective public officer or employee; or to hear or investigate a complaint, charge, or grievance by or against an individual public officer or employee.

Commissioner Hawkins made the motion for the Board to go out of Closed Session. All voted in favor and the motion carried.

There being no further business, the meeting was adjourned.

ATTEST:


Elizabeth W. Corn, Clerk


Robert D. Eklund, Chairman

HENDERSON COUNTY BOARD OF COMMISSIONERS

100 North King Street
Hendersonville, North Carolina 28792-5097
Phone: 704-697-4808 • Fax: 704-698-6183
TDD: 704-697-4580

BOB EKLUND
CHAIRMAN
GRADY HAWKINS

VOLLIE G. GOOD
RENEE KUMOR
DON WARD

RESOLUTION

WHEREAS, CAROLINA TEXTILE RECYCLING is engaged in the business of textile recycling and seeks a source of supply for textiles; and

WHEREAS, HENDERSON COUNTY desires to make textile recycling facilities available to its residents and the general public to promote the reduction in consumer textile waste; and

WHEREAS, the CAROLINA TEXTILE RECYCLING desires to provide recycling containers to HENDERSON COUNTY for location in a recycling drop-off center, and to purchase from HENDERSON COUNTY all post-consumer textiles deposited in the recycling containers;

WHEREAS, CAROLINA TEXTILE RECYCLING and HENDERSON COUNTY desire to memorialize their lease agreement in writing.

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

1. The Chairman of the Henderson County Board of Commissioners and the Clerk to the Board are hereby authorized to execute the Recycling Agreement which is attached hereto as "Exhibit A" the terms of said Exhibit being incorporated herein by reference as if fully set forth herein, and the terms of said Exhibit are hereby agreed to by the Board of Commissioners.
2. The County Attorney, the Clerk to the Board, the County Manager, the Finance Director, and the Assistant County Manager/Staff Attorney are authorized to take any further actions necessary to revise said Recycling Agreement consistent with the intent of said Agreement.

THIS the 7th day of July, 1997.

THE HENDERSON COUNTY BOARD OF COMMISSIONERS

BY: *Robert D. Eklund*
ROBERT D. EKLUND, Chairman

ATTEST:

Elizabeth W. Corn
Clerk to the Board

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STATE OF NORTH CAROLINA

RECYCLING AGREEMENT

COUNTY OF HENDERSON

THIS AGREEMENT, made this the 7th day of July, 1997, by and between CAROLINA TEXTILE RECYCLING, with its principal place of business at 68 Anderson Road, Walterboro, South Carolina, 29488 (hereinafter referred to as "Company"), and HENDERSON COUNTY, NORTH CAROLINA, with its administrative offices at 100 North King Street, Hendersonville, North Carolina, 28792 (hereinafter referred to as "County").

WITNESSETH:

WHEREAS, the Company is engaged in the business of textile recycling and seeks a source of supply for textiles; and

WHEREAS, the County desires to make textile recycling facilities available to its residents and the general public to promote the reduction in consumer textile waste; and

WHEREAS, the Company desires to provide recycling containers to the County for location in a recycling drop-off center, and to purchase from the County all post-consumer textiles deposited in the recycling containers (hereinafter referred to as "Recycling Containers") at the price and upon the terms and conditions herein contained;

NOW THEREFORE, in consideration of the foregoing, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto hereby agree as follows:

1. **License and Authority**. The County hereby grants to the Company a license for the term of this Agreement, which shall not be terminable except as set forth in this Agreement, to install and operate Recycling Containers on the County's real property located at the Henderson County Landfill Recycling Center. The County hereby agrees that, during the term of this Agreement, it shall not license or lease space at the Henderson County Landfill Recycling Center to any other person or entity to install, operate or maintain any Recycling Container for the recycling of textile waste.
2. **Title and Installation**. Subject to the terms of this Agreement, the Company agrees to deliver and install, at Company's expense, the Recycling Containers at the Henderson County Landfill Recycling Center. Title to the Recycling Containers shall at all times hereunder be vested exclusively in the Company, and the County shall not have the right to sell, transfer, convey or grant a lien interest in the Recycling Containers to any third party.

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3. **Maintenance and Repair.** The County covenants and agrees:
- a. To regularly supervise and monitor the condition of the Recycling Containers;
 - b. To maintain the Recycling Containers in good condition and repair, normal wear and tear excepted;
 - c. To the extent possible, to keep the textiles placed in the Recycling Containers dry and protected from the elements.
4. **Guaranteed Minimum.** The County represents, warrants and guarantees that the Recycling Containers placed at the Landfill Recycling Center will receive deposits of at least five hundred (500) pounds of textiles during each fourteen (14) day period during the term of this Agreement. To achieve an accurate weight of the textile deposits, said deposits shall be weighed on the Henderson County Landfill scales at the time of removal. In the event that there is less than five hundred (500) pounds of textiles deposited in the Recycling Containers for three (3) consecutive fourteen (14) day periods, then the Company, at its option, may immediately terminate this Agreement.
5. **Fees.**
- a. In consideration for the License granted hereunder, the Company agrees to pay to the County an amount equal to the market value of the textiles placed in the Recycling Containers. The market value payable to the County hereunder shall be based on the then-current market value per pound of recycled textiles at the time that the Company collects the textiles from the Recycling Containers. Notwithstanding the foregoing, the minimum fee for the textiles deposited shall be five (5) cents per pound regardless of the then-current market value. The Company shall collect the textiles from the Recycling Containers on a regular basis, no less frequently than once every fourteen (14) days, and shall remit payment to the County within thirty (30) days thereafter payable to Henderson County Solid Waste Department, 802 Stoney Mountain Road, Hendersonville, North Carolina, 28791, ATTN: Nippy Page, Solid Waste Planner.
 - b. The Company agrees that any fees that it may incur as a result of having to landfill some or all of the textiles collected from the Recycling Containers shall be borne solely by the Company and the Company will save and hold County harmless for any and all such fees.

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6. Mutual Covenants and Warranties

- a. Each party warrants that it has the corporate or other organizational power and authority to execute, deliver and perform this Agreement. Each party further warrants that the execution, delivery and performance by it of the Agreement has been duly authorized and approved by all requisite action of the party's management and appropriate governing body.
- b. This Agreement, when executed and delivered shall constitute the valid and legally binding obligation of each party enforceable against it in accordance with the Agreement's terms and conditions, except as such enforceability may be limited by applicable bankruptcy, insolvency, reorganization, receivership, conservatorship, moratorium, or other similar laws now or hereafter in effect, and except as such enforceability may be limited by general principles of equity.
- c. Each party shall comply with all applicable requirements of federal, state and local laws, ordinances, administrative rules and regulations, the noncompliance of which would materially affect the ability of that party to perform its obligations under this Agreement.

7. Indemnification.

- a. To the extent permitted by law, the County shall indemnify, defend, and hold harmless the Company, its agents, employees, and affiliates, from and against any liability, damage, cost, charge and expense (including but not limited to reasonable attorney fees and other costs of defense) arising out of any claims, demands, proceedings or suits brought by any third parties relating to the Recycling Containers or their location or resulting from the breach of this Agreement by the County or any negligent acts or omissions or misconduct of the County.
- b. To the extent permitted by law, the Company shall indemnify, defend, and hold harmless the County, its agents, employees, and affiliates, from and against any liability, damage, cost, charge and expense (including but not limited to reasonable attorney fees and other costs of defense) arising out of any claims, demands, proceedings or suits brought by any third parties relating to the Company's collection, sale and/or distribution of textiles from the Recycling Containers or resulting from the breach of this Agreement by Company or any negligent acts or omissions or misconduct of the Company.
- c. County shall at all times during the term of this Agreement maintain insurance in such amounts and with such coverages as set forth in this

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Paragraph 6(c), and shall upon demand provide to the other party evidence of such insurance. The County, at its own expense, shall procure and maintain policies of insurance to include the following coverage: (I) all risk property coverage on the Landfill Recycling Center; and (II) comprehensive general liability insurance.

8. **Limitation on Liability.** Other than (1) the obligation to indemnify as set forth in paragraph 7, (2) actual damages for breach of the agreement, and (3) the costs and expenses provided for in this agreement, neither party shall be liable to the other or anyone else for any other damage, cost, or expense, and shall in no event be liable for any incidental, special, consequential or punitive loss or damage (whether or not arising out of circumstances known or foreseeable) arising out of this Agreement or any obligation of the parties hereunder or resulting herefrom.
9. **Term and Termination.** This Agreement shall be for an original term of one (1) year from the date of execution hereof (hereinafter referred to as the "Term"). Either party may terminate this Agreement by giving the other at least sixty (60) days written notice in advance of the requested termination date. If neither party terminates the Agreement as allowed by this Paragraph prior to the expiration of the term, the Lease shall automatically renew for successive one (1) year terms until such time as one party gives the other party sixty (60) days advance written notice or termination. Upon termination of this Agreement, the Company shall, within thirty (30) days after the date of termination, at its own expense, remove the Recycling Containers from the Henderson County Landfill Recycling Center.
10. **Miscellaneous**
 - a. Neither party shall have the right to assign this Agreement, or to assign its rights, or delegate its duties under this Agreement, either in whole or in part, at any time without the prior written consent of the other, which consent shall not be unreasonably withheld or delayed. All of the terms and provisions of this Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective permitted successors and assigns.
 - b. The relationship of the parties under this Agreement is and shall remain an independent contractual relationship and not that of franchisor and franchisee, joint venturers, principal and agent. Neither party shall have the authority to assume or create obligations on behalf of the other with respect to the subject matter of this Agreement, and neither party shall take any action which has the effect of creating the appearance of its having such authority.
 - c. The respective obligations of the parties under this Agreement which by their

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nature would continue beyond the termination of this Agreement shall survive termination of this Agreement.

- d. Any sales, use, excise, property or other taxes payable in connection with or attributable to the Henderson County Landfill Recycling Center shall be paid by County. Any sales, use, excise, property or other taxes payable in connection with or attributable to the Recycling Containers and/or the textiles collected therein shall be paid by Company.
- e. All notices under this Agreement shall be in writing and shall be given in person or by mail, addressed as set forth at the outset of this Agreement, or to such other address as either party may designate by notice pursuant hereto.
- f. No course of dealing, course of performance, or failure of either party to strictly enforce any term, right, or condition of this Agreement shall be construed as a waiver of any such term, right or condition.
- g. This Agreement shall be governed by the laws of the State of North Carolina.
- h. The parties expressly agree that this Agreement does not create, nor shall it be construed to create, any rights enforceable by a person or entity not a party to this Agreement.
- i. The terms and conditions contained in this Agreement supersede all prior and contemporaneous oral or written understandings between the parties and constitute the entire agreement between them concerning the subject matter of this Agreement.
- j. This Agreement shall not be modified or amended except by a writing signed by the party to be charged, and no changes or additions to this Agreement shall be binding upon either party unless signed by an authorized representative thereof.

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

CAROLINA TEXTILE RECYCLING

BY: _____

Title: _____

HENDERSON COUNTY

BY: Robert D. Eklund
Robert D. Eklund, Chairman

ATTEST:

Elizabeth W. Corn
Clerk to the Board

[OFFICIAL SEAL]

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