

**HAYWOOD COUNTY COMMISSIONERS**  
**REGULAR MEETING – September 10, 2012**

**CALL TO ORDER**

Chairman Mark S. Swanger convened the regular meeting of the Haywood County Board of Commissioners at 5:30 p.m. in the Historic Courtroom at the Haywood County Historic Courthouse, Waynesville, North Carolina, with Chairman Mark S. Swanger, Vice-Chairman J.W. “Kirk” Kirkpatrick III, Commissioners L. Kevin Ensley, Michael T. Sorrells and Bill Upton, present. Staff members present were County Manager Marty Stamey, County Attorney Leon M. “Chip” Killian, III, Finance Director Julie Davis, Public Information Officer David Teague, and Executive Assistant/Deputy Clerk Amie Owens.

**PLEDGE OF ALLEGIANCE**

Chairman Swanger led the pledge of allegiance.

**INVOCATION**

Commissioner Upton offered the invocation.

**PUBLIC HEARING**

Chairman Swanger recognized Joel Setzer and Jonathan Woodard from NC Department of Transportation (NCDOT) to speak regarding the Secondary Road Improvement Program (SRIP). Mr. Setzer explained that the goal of this public hearing was to gain input on the proposed plan for the SRIP for FY 2012-2013. He explained that the funds available from the state are based on pro rata share of the secondary road miles within the county. The funding amount for FY 2012-2013 is \$429,420. Mr. Woodard reviewed the proposed project listing and noted that two of the projects were carryover from FY 2011-2012; he also noted some potential elements for future program years.

Chairman Swanger asked if anyone wished to comment regarding this proposed plan. No one addressed the board.

Commissioner Sorrells thanked Mr. Setzer and Mr. Woodard for their diligence and care in prioritizing these projects.

Chairman Swanger asked about roads with no posted speed limit signs and the process for adding this signage. Mr. Setzer explained that citizens should contact his office at (828) 586-2141 and a request submitted. Following submission, Mr. Setzer will review and discuss with engineers to determine if signage is appropriate.

Vice-Chairman Kirkpatrick asked about the timing of the projects at Howell Mill Road and the Lowe’s interchange. Mr. Setzer explained that these projects should be proceeding within the next 18 to 36 months. Mr. Setzer will email the exact schedule to the Board.

Mr. Setzer also highlighted the other ongoing projects including the preparation for a second rest area on Balsam Mountain on the right to prevent crossing traffic, median installation from Waynesville By-pass over Balsam to the Jackson County line, various bridge replacements, rehabilitation of sections of I-40, and slope review of I-40 in Fines Creek to prevent rock slides.

Commissioner Upton congratulated Mr. Setzer for the ahead-of-schedule completion of the Park Street Bridge in Canton.

Chairman Swanger noted that action regarding consent for this plan would be taken at the next regular meeting on October 1, 2012.

**PUBLIC COMMENTS**

Chairman Swanger opened the public comment session. Comments are generally limited to three minutes per individual, unless the speaker is representing a group for which the comment period may be extended to five minutes.

Monroe Miller addressed the board regarding a desire to meet with David Francis, Tax Administrator.

Chairman Swanger clarified that Mr. Francis is an elected official and not a subordinate of this board. Chairman Swanger closed the public comment session.

**CONSTITUENT CONCERNS**

No constituent concerns were noted.

**DISCUSSION / ADJUSTMENT / APPROVAL OF CONSENT AGENDA**

There were no adjustments to the agenda.

**CONSENT AGENDA**

Commissioner Sorrells made a motion that the consent agenda as presented be approved. Commissioner Upton seconded, and the motion carried unanimously.

- Approval of August 20, 2012 regular meeting minutes
- Kathi McClure, Human Resources Director, presented a contract for Key Risk Management Worker's Compensation third party management services. Ms. McClure explained that this is the current vendor and that she has been pleased with their performance. The contract is a \$25,000 annual fee; the County Attorney has reviewed.

**KEY RISK MANAGEMENT SERVICES, LLC  
PROFESSIONAL SERVICES CONTRACT**

**I. SCOPE OF WORK**

Key Risk Management Services, LLC ("Key Risk") shall render all the services specified in Exhibit A, attached hereto and made a part hereof. The services shall be performed in accordance with such requirements or restrictions as may be lawfully imposed by governmental authority and shall exclude any activities that may be deemed the practice of law.

**II. CONTRACT PRICE**

Haywood County (hereafter referred to as "Client"), shall pay Key Risk for its performance under this contract in accordance with the schedule contained in Exhibit B, attached hereto and made a part hereof. Unless otherwise specifically provided in Exhibit B, the scheduled payments include the cost of all labor, equipment, materials and travel required to complete the services described in Exhibit A.

**III. BILLING AND PAYMENT**

Key Risk shall submit invoices for all work performed under this contract. Invoices against this contract shall indicate the work performed for which billing is rendered, shall be in accordance with the schedule of payments in Exhibit B, and shall be submitted to the following: Julie Davis, Finance Director, Haywood County, 215 North Main Street, Waynesville, SC 28786. All payments are due within thirty (30) days of the invoice date.

**IV. DURATION**

This contract applies to all work performed by Key Risk which is described in Exhibit A hereto, whether performed in anticipation of or following the execution of this contract. The initial contract term of this contract shall begin on July 1, 2012 and shall expire on June 30, 2013, unless otherwise terminated as provided for herein.

Upon expiration of the initial contract term, the contract shall automatically renew itself from year-to-year subject to termination by either party upon ninety (90) days written notice. Further and notwithstanding any other term herein, either party may terminate this Agreement at any time, without cause and without penalty, upon the provision of at least (90) days prior written notice to the other party.

Key Risk may terminate this contract upon thirty (30) days written notice in the event Client fails to pay any invoice when due. Client may avoid such termination by paying all outstanding invoices within the notice period.

When this contract is terminated, then and in that event, the parties shall make a reconciliation to determine the amount Key Risk is entitled or obligated to pay back under this contract for services

performed prior to the date of termination. Thereafter, Client shall pay Key Risk monies due and owing after such reconciliation, if any, or Key Risk shall refund monies due and owing Client after such reconciliation, if any. Unless otherwise mutually agreed in writing by the parties, Key Risk shall have no obligation to perform any further services for Client of any kind after the date of termination or expiration.

#### V. CONFIDENTIAL INFORMATION

Any payroll information or other technical or business information ("Information") furnished or disclosed hereunder is the property of Client and shall be deemed confidential to Client and shall be returned to Client at the conclusion of this contract. If such information is known to the public Key Risk is free of any obligation to keep it confidential. Information subsequently made public need not be held in confidence by Key Risk Management Services, LLC.

Key Risk will maintain all claim files and all records in such a manner that Client can be given a copy of its files and records in the format in which the information is maintained by Key Risk. All computerized information shall be provided in a tape, disc, or other electronic format. All other information shall be provided in hard copy form. Records and files shall be provided to Client upon demand and shall be at the expense of Client, if any expense is incurred. Such demands for the files, records, reports or other information shall be made in writing and demanded items shall be delivered to Client within thirty (30) days of such demand.

#### VI. RELATIONSHIP

Key Risk shall exercise full control and direction over the subcontractors and employees of Key Risk performing the work covered by this contract.

Neither Key Risk nor its employees, agents or subcontractors shall be deemed to be employees of Client. It is understood that Key Risk is an independent contractor for all purposes and at all times. Key Risk is wholly responsible for withholding and payment of all federal, state and local income and other payroll taxes with respect to its employees.

#### VII. INDEMNIFICATION

Key Risk shall indemnify, defend and hold harmless, Client, its officers, directors, employees, agents and assigns with respect to any claims, demands, actions, damages, costs and expenses resulting from any errors, omissions, torts, intentional torts, or other negligence of Key Risk, its servants, agents, employees, associates or subcontractors. Client shall indemnify, defend and hold harmless, Key Risk, its officers, directors, employees, agents and assigns with respect to any claims, demands, actions, damages, costs and expenses to the extent resulting from the instructions, acts, or omissions of Client.

#### VIII. CLAIMS FUNDING AND EXPENSE PAYMENT

Client will provide funds to Key Risk for the payment of claims and claim expenses, to be held in Key Risk's trust account and in an amount mutually agreed upon by Client and Key Risk. The parties acknowledge and agree that Client will not receive any interest on the funds or any charges for fees associated with account maintenance. Client agrees to provide additional funds from time to time, as requested, to meet or exceed all expected paid claims and claims expenses.

#### IX. ASSIGNMENT

This Agreement shall be binding upon and inure to the benefit of the successors of each of the parties hereto, however neither this Agreement nor any rights or obligations hereunder may be assigned, delegated or transferred by either party without the prior written consent of the other party.

#### X. MEDIATION

As a condition precedent to any suit brought by either party, any controversy or claims asserted by either party, including but not limited to claims of negligence or breach of contract, shall be submitted to non-binding mediation under the supervision of an entity specializing in alternative dispute resolution. The supervising ADR entity shall be selected by mutual consent within fifteen (15) days of the initial notification by either party of a controversy, but if the parties cannot agree, the supervising ADR shall be the American Arbitration Association. Mediation shall be held no later than forty-five (45) days after the initial notification of controversy, except that an extension of time may be made by mutual written consent.

#### XI. SEVERABILITY

If any provisions of this Agreement or application to any party or circumstances shall be determined by any court of competent jurisdiction to be invalid and unenforceable to any extent, the remainder of this Agreement, or the application of such provisions or circumstances other than those to which it is determined to be invalid or unenforceable shall not be affected thereby, and each provision hereof shall be valid and shall be enforced to the fullest extent permitted by law.

#### XII. GOVERNING LAW

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

#### XIII. AMENDMENT

The terms and provisions contained and referenced herein constitute the entire Agreement between the parties and supersede any previous communications, representations or Agreements, either oral or written, with respect to the subject matter hereof. This Agreement may not be amended except in a writing signed by both parties.

#### XIV. NOTICE

All notices, certificates or other communications provided for, authorized or required under this Agreement will be sufficiently given and will be deemed given when mailed by certified or registered mail, postage prepaid, with proper address indicated below. Until otherwise provided by the respective parties, all notices, certificates and communications to each of them will be addressed as follows:

##### IF TO COMPANY:

Key Risk Management Services, LLC  
Caldwell Building  
7900 McCloud Road, Suite 300  
Greensboro, North Carolina 27409  
Attn: Penny Gough

##### IF TO CLIENT:

Haywood County  
215 North Main Street  
Waynesville, NC 28786  
Attn: Kathi McClure

#### EXHIBIT A

##### SERVICE ELEMENTS

This is the Exhibit A referred to in the foregoing Contract between Client and Key Risk Management Services, LLC and sets forth the principal services to be performed under this Contract.

Key Risk will perform the following services:

1. Continue to administer all existing claims of Client and newly reported claims after the effective date of the contract.
2. Investigate, adjust and notify Client of questionable or improper claims before undertaking further activity.
3. After auditing medical bills for conformity to accepted reasonable fee schedules, Key Risk will tabulate and approve for payment all medical, hospital, compensation, and other benefits required by the Workers' Compensation Law, which shall be paid in accordance with the procedure agreed upon by the parties hereto.
4. Utilize the services of outside medical resources or advisory bodies with Client's approval.
5. Upon approval, potential rehabilitation cases can be recommended to firms known to develop rehabilitation plans with realistic goals. Key Risk will direct and monitor all cases for effectiveness and cost containment.
6. Establish the amount of and revise claim reserves.
7. Where necessary, contact claimants to obtain needed information, assure medical treatment, answer questions and encourage positive resolution.
8. Utilize an appropriate payment system in accordance with Client's fiscal policies, procedures and state requirements.
9. Maintain a current roster of physicians and/or medical specialists who provide initial treatment or specialty care. Consultations will be arranged as needed.
10. Recommend experienced and qualified legal counsel for Client's approval where needed for the defense of litigated workers' compensation claims. Key Risk will provide all pertinent information to the participant's legal counsel necessary to accommodate scheduled hearings before the NC Industrial Commission.
11. Initiate subrogation proceedings in making reasonable administrative efforts to recover from third parties, benefits paid under this program for which they may be legally liable, and cooperate with such legal counsel as may be designated in any legal action as may be necessary to affect such recovery.
12. Recommend specialized professional investigative services where needed.

13. Furnish statistical reports showing open and closed claims by location and a tabulation of all payments made and reserves set up for benefits and expenses because of occupational injuries sustained by employees.
14. Key Risk will file and report all necessary notices to the Excess Insurance carrier on behalf of the Client so long as the Client provides Key Risk with sufficient excess policy information and advises Key Risk on the appropriate reporting guidelines for each policy.
15. As agreed upon, Key Risk will compile and file all notices and reports required under the Workers' Compensation Statutes of the State of North Carolina.
16. Key Risk will maintain Special Account Handling Instructions as agreed to by both parties specific to the handling of Client's claims.
17. Client acknowledges and agrees that timely and complete reporting of claims is critical to the performance of Key Risk's services described herein.
  - a. In the event Client self administers a claim, Key Risk shall have no responsibility relating to such claim.
  - b. In the event Client directly pays claim related expenses for a claim that has been reported to Key Risk, Client shall be solely responsible for providing information to Key Risk so that the claim files maintained by Key Risk on Client's behalf may be updated. Further, Client shall be responsible for any issues related to the appropriateness of the expenses paid and the accuracy of the information provided to Key Risk.
18. Key Risk will issue 1099 forms and related reports to the IRS for payments issued by Key Risk during the term of this Contract.

**EXHIBIT B**

**FEES AND REIMBURSABLE EXPENSES**

This is the Exhibit B referred to in the foregoing Contract between Client and Key Risk Management Services, LLC and shows the amounts to be paid to Key Risk for the various services to be performed under this Contract.

Client agrees to pay Key Risk the following fees for services provided:

**I. Administrative Fees**

The flat fee for the services to be provided shall be \$25,000.

**II. Other Fees**

The fee for broker services is \$5,000.

Loss Control Services are available at \$140 per hour or on a "per project basis".

Fees for medical cost containment are contained in Exhibit C.

Billing for services performed during a period of less than a calendar month is prorated.

**Allocated Expenses**

In addition to the amounts charged per the fee schedule, Client will be responsible for allocated expenses. These are defined as medical bill audit/review services; PPO/Network savings; utilization review services; indexing; nurse review savings; court costs; fees for services of process; fees paid to independent claim adjusters or claim investigators handling claims involving the client; fees to attorneys; costs of undercover operative and detective services; cost of employing experts for preparation of maps, photographs, diagrams, chemical or physical analysis; advice, opinion or testimony concerning claims under investigation or in litigation; costs for legal transcripts of testimony taken at coroners' inquests; criminal or civil proceedings; costs for copies of any public records; costs of depositions and court reported or recorded statements; and any other similar fee, cost or expense reasonably charged for investigation, negotiation, settlement or defense of a claim or loss or to the protection and perfection of the subrogation rights of a client; and extraordinary travel expenses incurred by Key Risk at the request of the Client.

If this offer is not accepted within ninety (90) days following the proposal date, the offer shall expire. In the event this service contract is discontinued, Key Risk will return all of the open claim files at the time of termination. Key Risk will continue to handle such open files at the time of termination for an additional fee to be agreed upon at that time.

**EXHIBIT C**

**Managed Care Service Fees**

Fee Structure for Key Risk Managed Care Services  
Allocated to the claim file

<i>Utilization Review Services</i>	
Pre-Certification	\$135 flat rate per intervention
Consent Review	\$125 flat rate per intervention
Retrospective Review	\$155 flat rate per assignment
Peer Review	\$210 flat rate per assignment*
Physician Advising	Physician Fee* (plus 25% administration charge)
	*Rate dependent upon needs of case and always pre-approved by claims adjuster

*Medical Bill Review*  
Medical Bill Repricing: Processing bills and reducing to Fee Schedule -- \$8.75 per bill  
Enhanced Savings: Other savings including Provider Network Access, Nurse Review & Pharmacy Bills -- 30% of Savings

*Telephonic Case Management Services*  
Actual Time at \$84 per hour

*Onsite Case Management Services*  
Medical Case Management  
Actual Time at \$84 per hour plus actual expense  
(Travel & Wait Time will be prorated unless activities/travel consume entire workday)

*Nurse Research & Consulting Services*  
(including research of conditional payment bills from CMS)  
Actual Time at \$84 per hour plus actual expense

*Life Care Planning Services*  
Actual Time at \$128 per hour plus actual expense

<i>Medicare Set-Aside Services</i>	
File Evaluation	\$175
MSA Allocation	\$2,500 (Standard) or \$3,000 (Complex)
Submission to CMS	No Fee
Drug Utilization Review	\$800
Expedited Referral	\$500 (5 business days) or \$350 (10 business days)

**EXECUTION OF CONTRACT**

This contract is entered into as outlined in pages one through ten of the foregoing contract between Haywood County and Key Risk Management Services, LLC.

<b>Key Risk Management Services, LLC</b>	<b>Haywood County</b>
Signature _____	
Penny Gough	Marty Starney
Printed Name	Printed Name
Assistant Vice President, Alternative Risk Services	County Manager
Title	Title
Date _____	
	Date

**ADDITIONAL SERVICE ADDENDUM TO CONTRACT  
Medicare § 111 Reporting Services (Account Manager)**

This Additional Service Addendum to the Contract between the parties hereto ("Addendum"), is made as of July 1, 2012 (the "Addendum Effective Date"), by and between Key Risk Management Services, LLC ("Key Risk") and Haywood County ("Client").

1. **Purpose of Addendum.** Key Risk and Client entered into that certain contract dated July 1, 2012 (the "Agreement"). Client now desires that Key Risk provide additional services related to the mandatory reporting provisions of Section 111 of the Medicare, Medicaid and SCHIP Extension Act of 2007 ("MMSEA") for those claims covered by the Agreement ("Applicable Claims").
2. **Definitions**
  - 2.1 **Claim Input File** – means the data set transmitted from a MMSEA RRE to the COBC containing claim information for all Applicable Claims identified as involving Medicare beneficiaries.
  - 2.2 **Claim Response File** – means the file transmitted from the COBC to the RRE's account in response to a particular Claim Input File, containing the following for each claim contained in the Claim Input file: (a) data elements from the Claim Input File; (b) data elements from Medicare's files; (c) a code indicating the results of processing; and (d) any error codes and compliance flags associated with each claimant's file.
  - 2.3 **CMS** – means the Centers for Medicare & Medicaid Services, which is the entity responsible for implementation of the MMSEA reporting program.
  - 2.4 **COBC** – means the Coordination of Benefits Contractor, which is the entity that is assisting the CMS in the implementation of the MMSEA reporting program and manages the reporting systems and databases, including the RRE registration and reporting website.
  - 2.5 **Data Elements** – means the specific information required to be reported by the RRE to the CMS pursuant to MMSEA for each Applicable Claim.
  - 2.6 **Query File** – means a dataset of all Applicable Claims of the RRE transmitted on a particular date to the COBC to request information regarding whether any of the claimants are Medicare beneficiaries (is or was entitled and enrolled in Medicare).
  - 2.7 **Query Response File** – means a file transmitted from the COBC to the RRE's account in response to a particular Query File, indicating which of the queried Applicable Claims can be identified as involving Medicare beneficiaries based upon the information submitted.
  - 2.8 **RRE** – means Responsible Reporting Entity, and is the legal entity responsible for reporting claim information of Medicare recipients pursuant to the MMSEA.
3. **Services Provided by Key Risk.** Key Risk will provide the following services to Client related to Clients' MMSEA reporting requirements for the Applicable Claims ("Services"):
  - 3.1 **Completion of the Testing Process for File Submissions.** Key Risk will complete all Query File and Claim Input File submission testing required by the COBC and obtain approval from the COBC for reporting of real data.
  - 3.2 **Processing of Client's Query File.**
    - A. On a monthly basis, Key Risk will assemble and transmit Client's Query File to the COBC within the submission timeframe assigned to Client by COBC.
    - B. Key Risk will receive and review the Query Response File transmitted to Clients RRE Account by the COBC, and will use reasonable efforts to correct any mismatches or errors identified in the Response File, subject to Client's obligations to assist with the correction of any such mismatches or errors.
  - 3.3 **Processing of Client's Claim Input File.**
    - A. Key Risk will make reasonable efforts to collect all Data Elements required for every Applicable Claim.
    - B. On a quarterly basis, Key Risk will assemble and transmit Client's Claim Input File to the COBC within the submission timeframe assigned to Client by COBC.
    - C. Key Risk will retrieve and review the Claim Response File transmitted to Clients RRE Account by the COBC. Key Risk will then use reasonable efforts to correct any mismatches or errors identified in the Response File, subject to Client's obligations to assist with the correction of any such mismatches or errors.
  - 3.4 **Resolution of Noncompliance Issues.** Upon request of Client, Key Risk will assist Client in responding to any issues raised by CMS, including any notices of noncompliance.
  - 3.5 **Account Manager Services.** Key Risk will serve as Account Manager for Client and perform all functions generally required of account managers by MMSEA.
4. **Obligations of Client.** Client agrees to cooperate with Key Risk and assist Key Risk in the collection of claimant Data Elements for the Applicable claims, and assist Key Risk with the correction of any errors and/or mismatches in the Data Elements for the Applicable Claims within the timeframes required by the CMS for such corrections. Client will provide all Client RRE account-related information necessary for Key Risk to perform the Services described in this Addendum, including without limitation, the RRE ID, and the Claim Input File reporting period. Additionally, Client will make any changes in the RRE account reasonably requested by Key Risk, including without limitation, any necessary changes in file transmission method, and appointment or removal of Account Designees. Client will promptly provide Key Risk with copies of any correspondence received by Client from CMS relating to Client's MMSEA reporting reasonably requested by Key Risk.
  7. **General Provisions**
    - 7.1 **Use of Subcontractors.** Key Risk reserves the right to use subcontractors for any portion of the MMSEA reporting program.
    - 7.2 **Modifications.** In the event of any of any change(s) in reporting requirements pursuant to MMSEA, Key Risk may unilaterally modify the terms of the Services provided to the extent reasonably necessary to comply with such change(s) in reporting requirements. Key Risk shall provide at least thirty (30) days advance written notice of such modifications to Client unless the nature of the change(s) to the MMSEA reporting requirements require more rapid modification of the Services, in such case Key Risk will provide reasonable notice as the circumstances allow. All other modifications shall be in writing and signed by the parties.
    - 7.3 **Unforeseen Circumstances.** Neither party shall be liable or deemed to be in breach for a delay or failure in performance of this Addendum or interruption of services resulting from acts of God, civil or military authority, war, riots, civil disturbances, accidents, fire, earthquake, floods, strikes, lock-outs, labor disturbances, foreign or governmental order or other similar causes not reasonably within its control.
    - 7.4 **Entire Agreement.** This Addendum constitutes the entire agreement among the Parties with respect to its subject matter and supersedes all other prior agreements and understandings, both written and oral.

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

<b>Key Risk Management Services, LLC</b>	<b>Haywood County</b>
_____	_____
Signature	
_____	_____
Mary Cough	Mary Stamey
Printed Name	Printed Name
Assistant Vice President, Alternative Risk Services	County Manager
_____	_____
Title	Title
_____	7/1/2012
Date	Date

- Stephen King, Solid Waste Director, presented a contract for PLUS Linen and Uniform Services for departmental uniforms. These uniforms will help easily identify the staff at the various facilities; this is an increase of approximately \$2,000 annually.





HAYWOOD COUNTY  
BUDGET ORDINANCE AMENDMENT  
FISCAL YEAR 2013

PER: \_\_\_\_\_  
JNL: \_\_\_\_\_

BE IT ORDAINED by the Board of Commissioners of Haywood County that the following amendment be made to the budget ordinance for the fiscal year ending June 30, 2013.

Section 1. To amend the General Fund, the expenditures are to be charged as follows:

Department	Account Number	Current Budget	Increase (Decrease)	Amended Budget
General Health				
Salary	115110-512100	1,813,085	10,000	1,823,085
SSC	115110-518100	141,405	795	142,171
Retirement	115110-518200	124,584	674	125,258
Hospitalization Ins.	115110-518300	397,320	770	398,090
401(K) Contrib.	115110-518204	18,484	100	18,584
Other Fringe	115110-518900	1,584	3	1,587
Office Supplies	115110-526000	6,000	4,100	10,100
Travel	115110-531100	6,000	288	6,288
which will result in a net increase of \$		16,700		in the expenditures of the General Fund.

To provide the additional revenue for the above, the following revenues will be increased as the money has been received:

Revenue	Acct. No.	Current Budget	Increase (Decrease)	Amended Budget
Health Dept Grants	110050-451101		16,700	16,700

Section 2. Copies of this budget amendment shall be delivered to the Budget Officer and the Finance Officer for their direction.

Adopted this the 10<sup>th</sup> day of September, 2012  
  
 Chairman  
 Haywood County Board of Commissioners

ATTEST:  
  
 Clerk to the Board

Explanation: Funds received go to support current staff in doing a Community Transformation Project. The funds will support programs which promote CTP strategy focused on policy, system, and environmental change in Haywood County

HAYWOOD COUNTY  
BUDGET ORDINANCE AMENDMENT  
FISCAL YEAR 2012-2013

PER: \_\_\_\_\_  
JNL: \_\_\_\_\_

BE IT ORDAINED by the Board of Commissioners of Haywood County that the following amendment be made to the budget ordinance for the fiscal year ending June 30, 2013.

Section 1. To amend the General Fund, the expenditures are to be charged as follows:

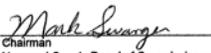
Department & Account	Account Number	Current Budget	Increase (Decrease)	Amended Budget
Elections				
Salaries - Temporary/FICA	114170-512600	52,318	24,281	76,579
Board member expense	114170-517000	5,000	1,364	6,364
Professional Services - other election	114170-519905	28,800	7,894	34,494
Office supplies/labels	114170-526000	25,000	1,026	26,026
Travel (rental truck fuel)	114170-531100	7,000	122	7,122
Advertising	114170-537000	2,000	1,530	3,530
Rent of equipment	114170-543600	4,034	1,042	5,076
Contingency	119910-599100	235,488	(37,039)	198,427

which will result in a net increase (decrease) of \$ \_\_\_\_\_ in the expenditures of the General Fund.

To provide the additional revenue for the above, the following revenues will be increased as the money has been received:

Revenue	Acct. No.	Current Budget	Increase (Decrease)	Amended Budget

Section 2. Copies of this budget amendment shall be delivered to the Budget Officer and the Finance Officer for their direction.

Adopted this the 10<sup>th</sup> of September, 2012  
  
 Chairman  
 Haywood County Board of Commissioners

ATTEST:  
  
 Clerk to the Board

Explanation: To cover the cost of the second primary that was paid from the current fiscal year from the Elections Budget. Budget amounts need to be reimbursed to Elections in order to cover the remaining election days this fiscal year.

Mr. Francis commented briefly related to the comments made earlier related to denial of meeting.

- August 2012 Refunds, Releases, Amendments and Discoveries
- David Francis, Tax Administrator, presented the Settlement of 2011 taxes. Mr. Francis highlighted the collection rate for 2011 as 96.19% with a total of \$37,042,043 collected.

Vice-Chairman Kirkpatrick clarified that all individuals are responsible for listing their own property for taxation purposes; it is not the responsibility of the tax office. Mr. Francis answered affirmatively and noted that the letters sent to individuals are worded in accordance with state statute and were sent as an effort to clean up accounts.

Commissioner Ensley added that it is a question of fairness and all individuals are responsible for listing and paying their taxes. He commended the tax office staff for their high collection rate.

## **NEW BUSINESS**

### **Request Approval of Order of Collection**

Chairman Swanger recognized David Francis, Tax Administrator. Mr. Francis requested approval of the Order of Collection for the 2012 taxes. This document provides the Tax Administrator with the authority to collect taxes on real and personal property annually. Mr. Francis noted that there has been an increase of \$333,000 in the billed amount for 2012 taxes over the same period for 2011; showing that growth is still occurring within the county.

Commissioner Upton motioned to approve the Order of Collection for the 2012 taxes as presented. Vice-Chairman Kirkpatrick seconded; the motion carried unanimously.

### **Property Tax Commission Appeal**

Mr. Francis noted that a commercial three-tract parcel (191377) had been appraised, and the private appraisal amount submitted to the tax assessor's office. Following review of the property and plans for development, certain new characteristics not previously shared with Board of Equalization and Review, and some other inconsistencies were noted. Mr. Francis explained that the property owner agreed with the County's appraisal and agreed to the recommended changes in values as follows:

- Mountain Tracts be changed from \$18,473,400 to \$6,149,302
- Acreage Tracts remain unchanged at \$1,100,700
- Cottage Lots remain unchanged at \$1,000,000
- Building improvements be changed from \$1,552,700 to \$1,966,900
- Lot #438 be valued at \$185,000
- Lot #436 be valued at \$176,100

Commissioner Upton inquired as to where the parcel was located. Mr. Francis answered in Waynesville, near the watershed. Vice-Chairman Kirkpatrick asked to abstain from voting on this matter since he has represented this client previously, and does advise on other matters. Chairman Swanger granted Vice Chairman Kirkpatrick's request for abstention.

Commissioner Upton motioned to approve the settlement amount for 191377 as presented. Commissioner Sorrells seconded; the motion carried with four affirmative votes and one abstention.

### **Request Approval of Additional Engineering Services for Francis Farm Gas Collection**

Mr. Francis provided a historical overview of the Francis Farm Landfill Gas Collection Project and its goal of producing energy/power. He noted that power is now being produced and added that 300,000 gallons of leachate, and 6.5 million standard cubic feet of landfill gas were removed from the landfill. Mr. Francis recommended approval of the additional payment for services to McGill Associates for their extensive work on this project.

Mr. Mark Cathey, Senior Project Manager, McGill Associates addressed the board. Mr. Cathey explained that the request for additional services would be in two categories:

1. Grant Administration included oversight of the Department of Energy (DOE) grant and other regulatory body requirements during the project at \$14,251.84; and
2. Construction Administration that extended to thirteen (13) months rather than the agreed upon six (6) month period; including coordination and operational issues with contractors and other service professionals at \$22,741.64.

The total request for additional services provided is \$36,993.48.

Chairman Swanger asked County Manager Stamey if he had reviewed this project and the service request. Mr. Stamey concurred that this information was accurate and the amount was acceptable. Commissioner Ensley questioned if this additional funding would come from Contingency. Mr. Stamey answered that the funding would come from Fund 24 and if approved, a budget amendment would be presented at the next regular meeting.

Commissioner Ensley motioned to approve the additional engineering services for \$14,251.84 grant administration and \$22,741.64 for construction administration due to extended period of the project for McGill and Associates as presented. Commissioner Upton seconded; the motion carried unanimously.

**Request approval for addition to State Maintained Secondary Road System – Sugar Mountain Road**

Chairman Swanger recognized Kris Boyd, Planning Director. Mr. Boyd received a petition from the Sugar Valley Springs, Inc. Homeowners' Association to add Sugar Mountain Road to the NCDOT secondary road system (SRS). He noted the statutory requirement is that the board must approve the petition prior to the evaluation and participation of the NCDOT. Mr. Boyd has spoken with Mr. Setzer and Mr. Woodard with the NCDOT and both are aware of this request and willing to move forward with this request. Mr. Boyd asked for approval of the resolution from the board to add Sugar Mountain Road to the NCDOT Secondary Road System.

Commissioner Ensley motioned to approve the Resolution Accepting Addition to the Secondary Road System for Sugar Mountain Road in the Sugar Valley Springs subdivision as presented. Commissioner Sorrells seconded; the motion carried unanimously.

**Request approval of Joint Resolution between the Town of Canton and Haywood County to provide Inspection Services**

Chairman Swanger recognized Al Matthews, Town Manager, Town of Canton. Mr. Matthews provided a historical overview of inspections in Canton and noted that the County had previously assisted with level 2-commercial building programs while Canton's inspectors were working toward certification. Mr. Matthews explained that the Town of Canton's Board passed a resolution requesting a similar agreement to that of what is currently in place between the County and towns of Maggie Valley and Clyde for inspection services.

Mr. Killian asked if a more formal interlocal agreement would be required above this resolution. Mr. Matthews answered that as this is the same agreement as with other municipalities and there is no need for additional agreements.

Mr. Bruce Crawford, Building Inspector, noted that staffing is adequate in Inspections to perform these duties, and he will follow up with Mr. Matthews and Canton Board regarding any zoning issues.

Commissioner Ensley added that this agreement would allow for greater continuity throughout the county, especially for contractors.

Commissioner Upton motioned to approve the Joint Resolution of the Town of Canton and Haywood County as presented, and reads as follows: *"Be it resolved that pursuant to General Statute 160-A-413, the Board of Aldermen requests and authorizes the Haywood County Commissioners to direct the County Building Inspector to exercise their powers within the Town of Canton and the Extraterritorial Zoning Jurisdictions of the Town of Canton. Adopted the 28<sup>th</sup> day of August, 2012."* Commissioner Sorrells seconded; the motion carried unanimously.



JOINT RESOLUTION OF THE TOWN OF CANTON  
AND HAYWOOD COUNTY

STATE OF NORTH CAROLINA  
COUNTY OF HAYWOOD  
TOWN OF CANTON

BE IT RESOLVED, that pursuant to General Statute 160-A-413, the Board of Aldermen requests and authorizes the Haywood County Commissioners to direct the County Building Inspector to exercise their powers within the Town of Canton and the Extraterritorial Zoning Jurisdictions of the Town of Canton.

Adopted this the 28<sup>th</sup> day of August, 2012.

TOWN OF CANTON

HAYWOOD COUNTY

by: *Michael B. Ray*  
Mayor  
Michael B. Ray

by: *Mark Swanger*  
Mark Swanger  
Chairman Board of Commissioners

ATTEST:  
*J. B. [Signature]*  
[Seal]

ATTEST:  
*[Signature]*

**Request for Public School Building Capital Fund for ADM Funding and County Match**

Chairman Swanger recognized Tracy Hargrove, Director of Maintenance, Haywood County Schools. Mr. Hargrove explained that two (2) facilities, Waynesville Middle School (WMS) and Riverbend Elementary School (RES) had buildings in need of roof repairs. Mr. Hargrove explained that both were PVC roofed and problems have arisen due to age. Mr. Hargrove requested ADM funding for WMS of \$240,000 with a local match of \$60,000 and for RES funding of \$54,000 with a local match of \$13,500.

Commissioner Sorrells motioned to approve the expenditure of ADM funding and county match for roofing projects at Waynesville Middle School and Riverbend Elementary School as presented. Commissioner Ensley seconded; the motion carried unanimously.

**Request approval of Proposed Change Orders for Haywood Community College Creative Arts Building**

Chairman Swanger recognized Bill Dechant, Director of Campus Development, Haywood Community College. Mr. Dechant presented seven (7) proposed change orders for consideration by the board. All proposed change orders were approved by the HCC board, and by the State Construction office.

- Proposed Change Order #47 - \$18,734 – revisions to drywall ceilings and acoustic ceilings due to mechanical and electrical changes
- Proposed Change Order #51 - \$4,020 – building of retaining wall at back of cooling tower and generator at architect's request
- Proposed Change Order #52 - \$11,039 – change in exterior topping system on patio floor; was self-leveling; however, due to a slope in the patio, different material had to be used.
- Proposed Change Order #55 - \$4,088 – additional storm drain and catch basin above retaining wall
- Proposed Change Order #56 – (\$10,557) – site lighting is already available for building; however, labor charges were removed from this part of the contract until they are ready to be installed.

- Proposed Change Order #57 - \$6,738 – replacement of existing curb and asphalt patching
- Proposed Change Order #58 - \$550 – the cooling towers that are currently in place will have to be cleaned following insertion of retaining wall to ensure proper working order

Vice-Chairman Kirkpatrick questioned the term ‘subcommittee’ that was used in reference to approval. Mr. Dechant explained that the HCC board had appointed a four-member subcommittee (Richard Lanning, Bob Morris, Mary Ann Enloe, Bill Barker) in July to review the change orders in an effort to gain state approval in a timely manner, as the approval process appeared to cause delays for the contractor. Mr. Dechant added that this subcommittee reviews proposed change orders and provide a report to the full HCC Board of Directors once approved.

Commissioner Ensley again reiterated that the change orders that relate to architect or design changes should be discussed and funds should be recouped when possible.

Vice-Chairman Kirkpatrick voiced his concerns regarding the potential for long-term problems, based on architect recommendations, when the majority of the change orders were design issues. Chairman Swanger added that the concern is the number of change orders that are being presented.

**The meeting was recessed at 7:10 p.m.**

**The meeting was reconvened at 7:15 p.m.**

Commissioner Sorrells asked why the change orders were taking so long to be processed. Mr. Dechant answered that there are a number of factors including: timing of meetings, the monitor from the State Construction Office had retired and a replacement had not been assigned; however, he was working closely with an individual to ensure that requests are prioritized.

Commissioner Upton questioned, what about future problems with the building and unforeseen issues based on the changes. Mr. Dechant noted that he and the board felt that the building is built well and that the building would be sustainable.

Commissioner Sorrells asked when the building would be completed. Mr. Dechant explained that the beneficial occupancy date is October 5 with a final inspection date set in early November.

Vice-Chairman Kirkpatrick motioned to approve proposed change orders 47, 51, 52, 55, 56, 57 and 58 as presented and noting that the State Construction Office has previously approved. Commissioner Sorrells seconded; the motion carried unanimously.

#### **Budget Amendments for Change Orders 8, 9 and 10 for Haywood Community College**

Ms. Davis presented a budget amendment for change orders 8, 9 and 10 for Haywood Community College Creative Arts Building; all change orders were approved by the State Construction Office and were inclusive of all previously approved proposed change orders.

- Change Order 8 - \$25,723
- Change Order 9 – (\$76,446)
- Change Order 10 – \$55,577

The net funding required from Contingency is \$4,854.

Commissioner Sorrells motioned to approve the budget amendment for Change Orders 8, 9 and 10 as presented. Commissioner Upton seconded; the motion carried unanimously.

HAYWOOD COUNTY  
CAPITAL PROJECT BUDGET AMENDMENT  
FISCAL YEAR 2012-2013

PER: \_\_\_\_\_  
JNL: \_\_\_\_\_

BE IT ORDAINED by the Board of Commissioners of Haywood County that the following amendment be made to the capital project ordinance for the fiscal year ending June 30, 2013.

Section 1. To amend the Capital Project Fund - Community College construction projects, the expenditures are to be charged as follows:

Line Item	Account Number	Current Budget	Increase (Decrease)	Amended Budget
<b>COMMUNITY COLLEGE PRJS:</b>				
Creative Arts Bldg.			25,723	-
C/O - buildings construction	405924-558000-1HCC1	8,686,827	(76,446)	-
			55,577	8,691,681
Contingency (Creative Arts Cont.)	405924-599100-1HCC1	337,605	(4,854)	332,751

which will result in a net increase of \$ \_\_\_\_\_ in the expenditures of the Capital Project Fund.

To provide the additional revenue for the above, the following revenues will be increased as the money has been received:

Revenue	Acct. No.	Current Budget	Increase (Decrease)	Amended Budget
				-
				-
				-

Section 2. Copies of this amendment shall be delivered to the Budget Officer and the Finance Officer for their direction.

Adopted this the 10<sup>th</sup> of Sept., 2012.

  
 Mark Swanger  
 Chairman  
 Haywood County Board of Commissioners

ATTEST:   
 Clerk to the Board

<b>Explanation:</b>
To allocate the amount for change orders #8, #9, #10 per HCC request and NC Department of Administration approval.

**Request Approval of Quote for Two Ambulances in Current Budget Year**

Chairman Swanger recognized Jim Pressley, EMS Director. Mr. Pressley explained that the purchase of two (2) new ambulances was included in the EMS Budget. An RFP was posted and four bids were received. Mr. Pressley noted that the lowest responsible, responsive bid was with Southeastern Specialty Vehicles and requested approval of the bid.

Commissioner Upton motioned to accept the bid submitted by Southeastern Specialty Vehicles and place the order for two (2) ambulances. Commissioner Ensley seconded; the motion carried unanimously.

**Request approval to raise overdue fees at Library Branches**

Chairman Swanger recognized Sharon Woodrow, Library Director. Ms. Woodrow explained that in an effort to be in line with the NC Cardinal Consortium fee schedule, she would like to recommend that the overdue fees for materials be raised to \$0.25 per item per day, with a \$10.00 maximum per item. The current rate is \$0.10.

Vice-Chairman Kirkpatrick asked why there was a cap on the maximum fee when this may or may not cover replacement costs. Ms. Woodrow explained that the library has historically not charged replacement cost unless the item is considered lost (greater than 3 months without return). She noted that when an item is considered lost the full amount is placed on the patron's card as a charge.

Ms. Woodrow added that the fee is consistent with Buncombe and Jackson counties and this allows for interlibrary loaning of books. Chairman Swanger commented that this service is convenient for those who may work or live in another county.

Vice-Chairman Kirkpatrick motioned to approve an increase in overdue fees for books and audio to \$0.25 per item per day with a of \$10.00 maximum per item as presented. Commissioner Ensley seconded; the motion carried unanimously.

**Request approval of two documents from the NC Rural Center for Project Staples**

Chairman Swanger recognized Mark Clasby, Executive Director, Economic Development Commission. Mr. Clasby requested approval of two agreements from the NC Rural Center for Project Staples (Sonoco Plastics). He provided historical information related to the initial grant proposal and the requirements by the owner including the addition of at least 35 jobs.

Chairman Swanger asked if there were any concerns related to the contracts. Mr. Killian noted that since the county was essentially a pass-through status, the agreements were fine.

Commissioner Ensley motioned to approve the Private Owner Agreement and Private Owner Loan/Performance Agreement for Project Staples as presented. Vice-Chairman Kirkpatrick seconded; the motion carried unanimously.

2012-225-60501-107

## PRIVATE OWNER AGREEMENT

THIS AGREEMENT, entered into this the 27<sup>th</sup> day of April, 2012, by and between the Haywood County (hereinafter referred to as "GRANTEE") and the Rural Economic Development Center, Inc. (hereinafter referred to as "CENTER"), a North Carolina non-profit corporation.

## WITNESSETH:

THAT, WHEREAS, the CENTER was organized for the purpose of stimulating economic development and job creation in distressed areas; and

WHEREAS, in its efforts to stimulate and encourage economic development and job creation, the CENTER contracts with local governments to conduct development activities to solidify the location of a business or industry in its jurisdiction;

NOW, THEREFORE, in consideration of the mutual promises and such other valuable consideration as shall be set out herein, the parties hereto do mutually agree to the following terms and conditions:

1. Scope of Program/Other Agreements.

(a) The GRANTEE shall cause the Property Owner to execute a Loan/Performance Agreement, to develop, perform and complete the work set out in Exhibit A, B, C, and D (hereinafter referred to as the "Project") and said Project being that work described in a proposal entitled "Project Staples" as approved by the CENTER.

(b) The parties acknowledge that the funds provided hereunder have been provided in order to facilitate the creation of jobs in the community, and are subject to return to the CENTER if such jobs are not created and maintained. Therefore, GRANTEE agrees to enter into a Loan/Performance Agreement (the "Performance Agreement") substantially in the form attached hereto as Exhibit E with the owner of any real estate on which the Project is located. In the event any sums are repaid under the Performance Agreement, all such amounts will be paid to the CENTER. The GRANTEE will insure that the Loan Performance Agreement and Promissory Note are properly executed by the Owner and GRANTEE and that the execution constitutes an enforceable agreement against the Owner. Default under this provision will obligate the GRANTEE to repay any sums due back to the Center that may not be recovered from the Owner.

(c) GRANTEE agrees to provide CENTER with any information obtained pursuant to the Performance Agreement, and to allow the CENTER to execute any rights of the GRANTEE thereunder, including any rights of access, review or monitoring.

(d) GRANTEE agrees to exercise all of its rights and duties under the Performance Agreement in a prudent manner to ensure the use of the funds for the intended purposes and objectives and to preserve the rights of the CENTER hereunder and thereunder.

2. Changes in the Project.

(a) If changes or extra work are requested and authorized in writing by the CENTER, the GRANTEE will be available to furnish, or obtain from others, the services required.

(b) Any work referred to in paragraph 2(a) above shall be the subject of a separate written agreement between the CENTER and the GRANTEE stating the costs and schedule for completing said extra work.

(c) The GRANTEE shall immediately notify the CENTER of any change in conditions or local law, or any other event, which may significantly affect its ability to perform the Project in accordance with the provisions of this paragraph.

3. Term of Agreement. The effective period of this Agreement shall commence on 4/18/2012 and shall terminate on 4/18/2014 unless sooner terminated under Paragraph 11 (the "Termination Date").

4. Funding.

(a) The CENTER grants to the GRANTEE an amount not to exceed \$175,000.00, for expenditures relating to the Project. The GRANTEE hereby represents and warrants that all such sums as may be awarded under this grant shall be utilized exclusively for the purpose of the Project.

(b) In the event the GRANTEE breaches any of the covenants or agreements contained in this Paragraph 4, or if any of the representations and warranties of Paragraph 4 are untrue as to a material fact, the GRANTEE agrees to repay to the CENTER the full amount of sums awarded under this Agreement.

5. Independent Status of the GRANTEE.

(a) It is agreed between the parties that neither this Agreement nor any provisions hereof shall be deemed to create a partnership or joint venture between the CENTER and the GRANTEE. It is further agreed that except for the rights expressly granted to the CENTER in this Agreement, it shall not have any proprietary rights in the Project.

(b) The parties acknowledge that the GRANTEE is an independent entity. The GRANTEE shall not represent itself as an employee of the CENTER nor is the Agreement intended to be construed so as to make the GRANTEE an employee of the CENTER. The GRANTEE shall not have the ability to bind the CENTER to any agreement for payment of goods or services, nor shall it represent to any person that it has such ability. The GRANTEE shall be responsible for payment of all its expenses, including rent, office expenses and all forms of compensation to employees. The GRANTEE shall provide worker's compensation insurance to the extent required for its operations and shall accept full responsibility for payments of unemployment compensation, social security, income taxes, and any other charges, taxes or payroll deductions required by law in connection with its operations, for itself and its employees who are performing work pursuant to this Agreement. All expenses incurred by the GRANTEE are its sole responsibility, and the CENTER shall not be liable for the payment of any obligations incurred in the performance of the Project.

6. Method of Payment. The sums awarded under this agreement shall be paid to the GRANTEE in accordance with the Schedule of Payments attached hereto as Exhibit B. Each payment set forth in Exhibit B will be paid within twenty (20) days after receipt of a written

request for payment from the GRANTEE, which request shall certify that GRANTEE has performed the required work under this Agreement and that it is entitled to receive the amount so requested.

7. **Obligation of Funds.** Funds provided by the CENTER may not be obligated by the GRANTEE prior to the effective date or subsequent to the termination date of this Agreement. All obligations outstanding as of the termination date shall be liquidated within thirty days. Prior approval shall not be required for changes, which affect the approved budget unless a budget category is exceeded by ten (10) percent or \$500.00, whichever is greater. Any changes in the approved budget, which would result in the addition or deletion of a budget category, shall require prior approval from the CENTER.

#### 8. Reports

(a) The GRANTEE will furnish the CENTER with detailed written progress reports on a quarterly basis or other periods specified in Exhibit C.

(b) The reports referred to in paragraph 8(a) above should describe the progress made by the GRANTEE toward achieving the purpose(s) for which the funds were awarded. This should include the successes and problems encountered during the reporting period.

(c) Failure to submit a required report by the scheduled submission date will result in the withholding of any forthcoming payment until the CENTER is in receipt of the delinquent report.

(d) All funds awarded to the GRANTEE under this Agreement are appropriated by the North Carolina General Assembly. Accordingly, the GRANTEE acknowledges and agrees that it will be subject to the audit and reporting requirements prescribed by N.C.G.S. §159-34, Local Government Finance Act - Annual Independent Audit; rules and regulations. Such audit and reporting requirements may vary depending upon the amount and source of funding received by GRANTEE, and are subject to change from time to time. Upon completion, the GRANTEE agrees to forward to the CENTER one copy of any audited financial statements and accompanying reports generated covering the period that the GRANTEE has an active award contract with the CENTER. In addition to the audit and reporting requirements mandated by the State of North Carolina, the GRANTEE agrees to comply with any requests made by the CENTER from time to time for other financial and organizational materials to permit the CENTER to comply with its fiscal monitoring responsibilities.

(e) The GRANTEE agrees that within thirty (30) days after the termination of this Agreement, a Final Report shall be submitted to the CENTER, which describes the activities and accomplishments of the Project. The Final Report will include a review of performance and activities over the entire project period and will include a one-page program summary, which the CENTER can use for future publication. In that brief summary, the GRANTEE should describe the project, how it is implemented, to what degree the established project objectives were met and the difficulties encountered, what the project changed, and its cost. In addition to accounting for the use of the Project funds during the current fiscal year, the GRANTEE will submit a detailed final financial report by category showing all expenditures during the entire Project period and reports the source and amount of all other funds used to support the Project.

(f) The CENTER may request from the GRANTEE certain information, which will assist the CENTER with evaluation of the short- and long-range impact of its programs. The GRANTEE recognizes that such request may occur after the termination of this Agreement and agrees, to the extent possible, to provide such information to the CENTER.

#### 9. Project Records

(a) The GRANTEE shall maintain full, accurate and verifiable financial records, supporting documents, and all other pertinent data for this Project in such a manner as to clearly identify and document the expenditure of the CENTER funds provided under this Agreement separate from accounts for other awards, monetary contributions, or other revenue sources for this Project.

(b) The GRANTEE shall retain all financial records, supporting documents, and all other pertinent records related to the Project for a period of five years from the date of termination of this Agreement. In the event such records are audited, all project records shall be retained beyond the three-year period until any and all audit findings have been resolved.

(c) The GRANTEE agrees to make available to the CENTER, or its designated representative, all of its records which relate to the Project, and agrees to allow the CENTER or said representative to audit, examine and copy any and all data, documents, proceedings, records and notes of activity relating in any way to the Project. Access to these records shall be allowed upon request at any time during normal business hours and as often as the CENTER or said representative may deem necessary.

#### 10. Publications

(a) At the request of the CENTER, any reports, data, or other information given to, prepared or assembled by the GRANTEE under the Agreement must contain the following acknowledgment and disclaimer statement: "This material is based upon work supported in whole or part by the Rural Economic Development Center. All materials must also contain the following statement: "Any opinions, findings, conclusions, or recommendations expressed in this publication are those of the author(s) and do not necessarily reflect the views and policies of the Rural Economic Development Center."

(b) Except as provided in paragraph 10(a) above, the GRANTEE may publish or arrange for the publication of scientific and technical information resulting from work carried out under this Agreement.

(c) Upon publication of materials resulting from the work of the project, the GRANTEE shall furnish a minimum of two copies of reprints to the CENTER.

#### 11. Termination; Availability of Funds

(a) If the GRANTEE shall fail to fulfill in a timely and proper manner its obligations under this Agreement, or shall violate any of the covenants or stipulations of this Agreement, the CENTER shall thereupon have the right to terminate this Agreement by giving written notice to the GRANTEE of such termination and by specifying the effective date of termination. In such event, the CENTER shall have no responsibility to make additional payments under this contract after the date of termination. No further expenditures shall be made under this Agreement except for such work as shall have already been performed prior to the date of termination and the GRANTEE shall repay all unspent grant funds upon the demand of the CENTER.

(b) It is understood that the CENTER'S obligation to pay any amounts under this Agreement is contingent upon the availability and continuation of funds for such purpose. In the event that funds for this Project become unavailable, the CENTER may terminate this Agreement upon thirty (30) days written notice to the GRANTEE. All obligations of the CENTER to make payments under this Agreement shall cease as of the Termination Date.

12. **Liabilities and Loss.** The CENTER assumes no liability with respect to accidents, bodily injury, illness, breach of contract or any other damages or loss, or with respect to any claims arising out of any activities undertaken by the GRANTEE under this Agreement, whether with respect to persons or property of the GRANTEE, or third parties. The GRANTEE agrees to obtain insurance or otherwise protect itself or others as it may deem desirable. Further, the GRANTEE, to the extent allowed by law, agrees to indemnify, defend and save harmless the CENTER and its officers, agents and employees against any liability, including costs and expenses and attorneys' fees, for the GRANTEE'S violation of any proprietary right or right of privacy arising out of the publication, translation, reproduction, delivery, performance, use or disposition of any information published resulting from the work of the Project or based on any libelous or other unlawful matter contained in such information. The GRANTEE, to the extent allowed by law, also further agrees to indemnify, defend and save harmless the CENTER and its officers, agents and employees from any and all claims and losses accruing or resulting to any and all subcontractors, material men, laborers and any other person, firm or corporation furnishing or supplying work, services, materials or supplies in connection with the Project and the performance of this Agreement, and from any and all claims and losses accruing or resulting to any person, firm, or corporation who may be injured or damaged by the GRANTEE or its agents in the performance of the Project and this Agreement.

13. **Entire Agreement.** This agreement supersedes all prior agreements between the CENTER and the GRANTEE, and expresses their entire understanding with respect to the transactions contemplated herein, and shall not be amended, modified or altered except pursuant to a writing signed by both the GRANTEE and the CENTER.

14. **GRANTEE Representations and Warranties.** The GRANTEE hereby represents and warrants that:

(a) The GRANTEE is a unit of local government located in one of the state's 85 rural counties or an economically distressed urban county designated as Tier 1, 2, or 3 by the North Carolina Department of Commerce.

(b) The execution and delivery of this Agreement have been duly authorized by all necessary GRANTEE action and are not in contravention of law nor in contravention of the provisions of any indenture agreement or undertaking to which it is a party or by which it is bound.

(c) There is no action, suit proceeding, or investigation at law or in equity or before any court, public board or body pending, or to the GRANTEE'S knowledge, threatened against or affecting it, that could or might adversely affect the Project or any of the transactions contemplated by this Agreement or the validity or enforceability of this Agreement or the GRANTEE'S ability to discharge its obligations under this Agreement. If it is subsequently found that an action, suit, proceeding, or investigation did or could threaten or affect the development of the Project, the GRANTEE shall be liable to the CENTER for repayment of the entire amount of the grant and this Agreement may be terminated by the CENTER effective upon notice.

(d) No consent or approval is necessary from any governmental authority as a condition to the execution and delivery of this Agreement by the GRANTEE or the performance of any of its obligations hereunder, or all such requisite governmental consents or approvals have been obtained. The GRANTEE shall provide the CENTER with evidence of the existence of any such necessary consents or approvals at the time of the execution of this Agreement.

(e) The GRANTEE is solvent.

#### 15. Special Provisions and Conditions

(a) **Nondiscrimination.** The GRANTEE agrees not to discriminate by reason of age, race, religion, color, sex, national origin, or handicap related to the activities of this Agreement.

(b) **Conflict of Interest.** The GRANTEE certifies that to the best of its knowledge no GRANTEE employee or officer of the GRANTEE has any pecuniary interest in the business of the CENTER or of the Agreement, and that no person associated with the GRANTEE has any interest that would conflict in any manner with the performance of the Agreement.

(c) **Compliance with Laws.** The GRANTEE shall at all times observe and comply with all laws, ordinances, and regulation of the State, Federal and Local governments which may in any manner affect the performance of the Agreement.

(d) **Non-Assignability.** The GRANTEE shall not assign any interest in the Agreement and shall not transfer any interest in the same without prior written consent of the CENTER; provided, however, that claims for money due to the GRANTEE from the CENTER under this Agreement may be assigned to any commercial bank or other financial institution without such approval.

(e) Personnel. The GRANTEE represents that it has, or will secure at its own expense, all personnel required to monitor, carry out and perform the scope of services of this Agreement. Such employees shall not be employees of the CENTER. Such personnel shall be fully qualified and shall be authorized under state and local law to perform such services.

16. **Notice.** All notices required or permitted to be delivered hereunder and all communications in respect hereof shall be in writing and shall be deemed given when personally delivered or when deposited in the United States mails, certified, return receipt requested, first class, postage prepaid and addressed as follows:

If to the CENTER, Attn: **Melody Adams**  
Rural Economic Development Center, Inc.  
4021 Carya Drive  
Raleigh, NC 27610

If to the GRANTEE: Attn: **Mr. Mark Swanger**  
Haywood County  
213 North Main Street  
Waynesville, NC 28786-3869

or addressed to such other address or to the attention of such other individual as the CENTER or the GRANTEE shall have specified in a notice delivered pursuant to this subsection.

17. **Execution.** This Agreement may be executed in one or more counterparts, each of which, when executed, shall be deemed an original, and such counterparts, together, shall constitute one and the same Agreement which shall be sufficiently evidenced by one of such original counterparts.

18. **Construction.** This Agreement shall be construed and governed by the laws of the State of North Carolina.

19. **Acceptance.** If you agree to the grant conditions as stated, please return the original contract with your signature in the space provided. This grant may be withdrawn if your acceptance has not been received by the Rural Center within one month from the date the contract is received.

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

Haywood County

By: Mark Swanger  
Title: Chairman, Board of County Commissioners  
Date: 09/10/2012

Rural Economic Development Center, Inc.

By: Susan Edmund  
Title: Vice President, Finance & Administration  
Date: 4/27/12



2012-225-60501-107

PRIVATE OWNER LOAN/PERFORMANCE AGREEMENT

This Loan Performance Agreement (the "Agreement") is entered into this 15<sup>th</sup> day of August, 2012 by and between the Owner of the Property located at 288 Howell Mill Road (hereinafter referred to as the "Owner") and Haywood County (hereinafter referred to as the "Governmental Unit"), who hereby agree as follows:

WITNESSETH:

WHEREAS, Governmental Unit has provided loan support to or for the benefit of the Owner in order to stimulate and support economic development in the local geographic area by making the Property available to the Business to create new jobs (the "Business"); and

WHEREAS, a portion of such support has come from the Rural Economic Development Center, Inc. (the "Center") pursuant to its mission to stimulate and support economic development in the rural areas of North Carolina; and

WHEREAS, the Center requires the Owner to enter into this Loan/Performance Agreement as a condition of providing the support to the Governmental Unit for this project;

NOW, THEREFORE, in consideration of the mutual promises and other valuable considerations as shall be set out herein, the parties hereto do mutually agree to the following terms and conditions:

1. **Program.** The parties have agreed to develop, perform, and complete the work set out in *Exhibits A, B, C, and D* (hereinafter referred to as the Project) and said Project being that work described in the proposal entitled **Project Staples** as approved by the Center.
2. **Loan.** Governmental Unit hereby loans to the Owner the sum of **175,000.00** to fund the Project. The parties acknowledge that this Loan will be repayable only in the event the Business fails to achieve certain job creation goals described in paragraph 3 below. In the event such job creation goals are not achieved, the Owner agrees to pay to the Governmental Unit for redistribution back to the Center, the amount set forth in paragraph 5 below. As evidence of the obligation of the Owner hereunder, the Owner shall execute the promissory note, which shall also be executed by any individual owning in the aggregate at least 75% owner, which is attached hereto and incorporated herein by reference.
3. **Job Creation.** The Owner agrees that the Business shall be required to create **35** number of Jobs (defined below) within twenty-four months of 4/18/2012, the date of the grant's approval by the Center. The Owner hereby acknowledges that the funding by the Center and the Governmental Unit is predicated upon the satisfaction of this objective by the Business, that failure to achieve this objective will constitute a material default under the terms of this Agreement, and that any such failure shall require the Owner to repay all or a portion of the Loan pursuant to the provisions of paragraph 5 below. For purposes of this Agreement, a "Job" shall mean a full-time job (consisting of at least 35 hours per week of employment and eligibility for all benefits generally available for full-time employees of the Business) with the Business, at a wage at least equal to minimum wage, and located in North Carolina. The owner agrees that the Business reported the existence of **774** full-time jobs in North Carolina (Baseline Number) at the time the application of application to the Center AND the Owner hereby acknowledges that the Jobs created to satisfy the job creation objective must exist above the Baseline Number AND that the Business must maintain the full employment level required to meet the Job Creation objective for a period of six consecutive months.

4. **Verification of Jobs.** On the date that the required number of required new jobs have been created and maintained for six consecutive months the Owner shall cause the Business to notify the Governmental Unit so that the Governmental Unit and the Center can verify satisfaction of the conditions. The Owner shall cause the Business to provide to the Governmental Unit and the Center, or their respective designees, full and complete access to all records of the Business that would be reasonably necessary to verify the number and types of jobs created, and the wages paid to employees. Failure to provide such access upon reasonable request shall constitute a default under the terms of this Agreement.
5. **Repayment.** If the Business fails to create the required number of Jobs within twenty-four months from the date of the grant's approval by the Center, the Owner shall repay to the Governmental Unit, for redistribution back to the Center, an amount equal to the product of (i) \$5,000 (the amount of loan funds divided by the number of Jobs in paragraph 3) and (ii) the number of Jobs required to be created under paragraph 3, minus the number of jobs created, above the baseline number reported, that have been in existence for 6 consecutive months. If a requirement exists to repay any sums hereunder, the Governmental Unit shall notify the Owner in writing of the amount to be repaid, and shall direct it to pay such amount directly to the Center. All such amounts due hereunder shall be due upon demand by the Governmental Unit or the Center. If not paid within 30 days following demand hereunder, the unpaid amount due hereunder or any instrument securing this obligation, shall bear interest at the rate of 10 % per annum after demand until paid. Upon default in such payment, the Governmental Unit or the Center may employ an attorney to enforce their rights and remedies, and the Owner hereby agrees to pay the reasonable attorney's fees or the Governmental Unit or the Center, not exceeding a sum of 15% of the outstanding balance owing hereunder, plus all other reasonable expenses incurred by such party in exercising any of its rights and remedies upon such defaults.
- Termination of the Business prior to completion of the job creation requirements will constitute default and will cause the Local Government to suspend any further payments to the Property Owner and will require the Property Owner to repay to the Local Government any sums previously paid.
6. **Records.** The Owner agrees to maintain, and to cause the Business to maintain, full, accurate and verifiable records, supporting documents, and all other pertinent data for this Project to enable the verification of the requirements contained in this Agreement. All such financial records, supporting documents, and other pertinent records related to the Project shall be maintained for a period of at least 3 years from the Job Commitment Date. In the event any such records are audited, all such records shall be retained beyond the 3-year period until any and all audit findings have been resolved. The Owner agreed to make available, and to cause the Business to make available, to the Governmental Unit, the Center, or their designated representatives, all of its records which relate to the Project and the creation of Jobs, and agree to allow the Governmental Unit or the Center or their representatives to audit, examine, and copy any and all data, documents, proceedings, records and notes of activity related in any way to the Project or such Job creation. Access to these records shall be allowed upon request at any time during normal business hours, and as often as the Governmental Unit or the Center or said representatives may deem necessary.
7. **Reports.** The parties acknowledge that a portion of the funds which are the subject of this Agreement are appropriated by the North Carolina General Assembly. Accordingly, the Owner acknowledges and agrees that it may be subject to the audit and reporting requirements prescribed by N.C.G.S. §159-34, Local Government Finance Act-Annual Independent Audit; rules and regulations, or N.C.G.S. §143-6-23, State Grant Funds; Administration; oversight and reporting requirements; as applicable. The Owner agrees to comply with any reasonable requests made from time to time by the Center for other financial and organizational materials to permit the Center to comply with its fiscal monitoring responsibilities.
8. **Representations and Warranties.** The Owner hereby represents and warrants that:
- It is duly organized and existing, and, if a corporation, is duly incorporated under the laws of the state of North Carolina.
  - The execution and delivery of this Agreement has been duly authorized by all necessary action, and are not in contravention of law nor in contravention of any certificate of authority, bylaws, or other applicable organizational documents of such party, nor the provisions of any indenture, agreement, or undertaking to which it is a party or by which it is bound.
  - There is no action, suit, proceeding, or investigation at law or in equity for any court, public board, or body pending, or to such party's knowledge, threatened against or affecting it, that could or might adversely affect the Project, the creation of the Jobs, or any of the transactions contemplated by this Agreement, or the validity or enforceability of this Agreement or such party's ability to discharge its obligations under this Agreement. If it is subsequently found that an act, suit, proceeding or investigation did or could threaten the development of the Project or the creation of such Jobs, such party shall be liable to the Governmental Unit and to the Center for repayment of the entire amount of the Loan.
  - Such party shall at all times preserve its legal existence, except that it may merge or consolidate with or into or sell all or substantially all of its assets to any entity that expressly undertakes, assumes for itself, and agrees in writing to be bound by all of the obligations and undertakings of such party contained in this Agreement. If such party so merges, consolidates, or sells its assets without such an undertaking being provided, such party agrees to repay to the Governmental Unit and the Center the full amount of sums loaned under this Agreement.
  - No consent or approval is necessary from any governmental authority as a condition to the execution and delivery of this Agreement by such party or the performance of any of its obligations hereunder, or all such requisite governmental consents or approvals have been obtained. Such party shall provide the Governmental Unit or the Center with evidence of the existence of any such necessary consents or approvals at the time of the execution of this Agreement.
  - Such party is solvent.
9. **Termination; Availability of Funds**
- If the Owner shall fail to fulfill in a timely and proper manner its obligations under this Agreement, or shall, violate any of the covenants or stipulations of this Agreement, the Governmental Unit shall thereupon have the right to terminate this Agreement by giving written notice to the Owner of such termination and by specifying the effective date of termination. In such event, the Governmental Unit shall have no responsibility to make additional payments under this contract after the date of termination. No further expenditures shall be made under this Agreement except for such work as shall have already been performed prior to the date of termination and the Owner shall repay all unspent grant funds upon the demand of the Governmental Unit.
  - It is understood that the Governmental Unit's obligation to pay any amounts under this Agreement is contingent upon the availability and continuation of funds for such purpose. In the event that funds for this Project become unavailable, the Governmental Unit may terminate this Agreement upon thirty (30) days written notice to the OWNER. All obligations of the Governmental Unit to make payments under this Agreement shall cease as of the Termination Date.
10. **Liabilities and Loss.** As between the Owner and the Governmental Unit, the Governmental Unit assumes no liability with respect to accidents, bodily injury, illness, breach of contract or any other damages or loss, or with respect to any claims arising out of any activities undertaken by the Owner under this Agreement, whether with respect to persons or property of the Owner, or third parties. The Owner agrees to obtain insurance or otherwise protect itself or others as it may deem desirable. Further, the Owner agrees to indemnify, defend and save harmless the Governmental Unit and its officers, agents and employees against any liability, including costs and expenses and attorneys' fees, for the Owner's violation of any proprietary right or right of privacy arising out of the publication, translation, reproduction, delivery, performance, use or disposition of any information published resulting from the work of the Project or based on any libelous or

other unlawful matter contained in such information. The owner also further agrees to indemnify, defend, and save harmless Governmental Unit and its officers, agents and employees from any and all claims and losses accruing or resulting to any and all subcontractors, material men, laborers and any other person, firm or corporation furnishing or supplying work, services, materials or supplies in connection with the Project and the performance of this Agreement and from any and all claims and losses accruing or resulting to any person, firm, or corporation who may be injured or damaged by the Owner or its agents in the performance of the Project and this Agreement.

11. Special Provisions and Conditions.

- (a) Nondiscrimination. The Owner agrees that it will not, and will ensure that the Business will not, discriminate by reason of age, race, religion, colors, sex, national origin, or handicap related to the activities of this Agreement.
- (b) Compliance with Laws. The Owner shall at all times comply, and to cause the Business to comply, with all laws, ordinances, and regulations of the State, Federal and Local Governments which may in any manner affect the performance of the Agreement.
- (c) Non-Assignability. The Owner shall not assign any interest in the Agreement, nor should they transfer any interest in the same, without the written consent of the Governmental Unit; provided however, that claims for money due to the Owner from the Governmental Unit under this Agreement may be assigned to any commercial bank or other financial institution without such approval.
- (d) Notice. All notices required or permitted hereunder and all communications in respect hereof shall be in writing and shall be deemed given when personally delivered or when deposited in the United States Mail, certified, return receipt requested, postage prepaid, and addressed as follows:

To the Governmental Unit: Attn: MARK SWANGER  
HAYWOOD COUNTY  
215 N. MAIN ST  
WAYNESVILLE, NC 28786

If to the Owner: Attn: J. DAVID CAUDIE  
DC PLUS LLC  
PO Box 1306  
FLAT ROCK NC 28731

or addressed to such other address or to the attention of such other individual as either party above shall specify in a notice pursuant to this subsection.

- (e) Execution. This Agreement may be executed in one or more counterparts, each of which, when executed, shall be deemed an original, and all such counterparts, together, shall constitute one and the same Agreement which shall be sufficiently evidenced by one of such original counterparts.
- (f) Construction. This Agreement shall be construed and governed by the laws of the state of North Carolina.

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

GOVERNMENTAL UNIT NAME: HAYWOOD COUNTY  
 By: Mark Swanger  
 Title: Chairman, Board of County Commissioners

OWNER NAME: DC PLUS LLC  
 By: J. David Caudie  
 Title: MEMBER MANAGER

2012-225-60501-107

PRIVATE OWNER PROMISSORY NOTE

FOR VALUE RECEIVED, the undersigned (which means all the undersigned, jointly and severally) (collectively, the "Borrower") promises to pay to Haywood County, or assigns (the "Holder"), the principal sum described below, not to exceed 175,000.00, together with interest after default as described below.

The Borrower acknowledges that the Holder has agreed to advance up to the dollar amount indicated above pursuant to a Loan/Performance Agreement of even date by and among the Borrower and the Holder (the "Agreement"), which requires the creation of certain full-time jobs by the Business. In the event all or a portion of the required number of jobs are not created within the time periods indicated in the Agreement, all or a portion of the amount indicated above shall be subject to repayment to the Holder. The Borrower hereby agrees to repay to the Holder, in accordance with the Agreement, an amount equal to the product of (i) \$5,000 and (ii) number of jobs required to be created under the Agreement, minus the number of jobs created, above the baseline number reported, that have been in existence for 6 consecutive months. All such amounts due hereunder shall be due upon demand by the Holder, and shall be paid directly to the Rural Economic Development Center. Holder shall have the right to assign this Note at any time to the Rural Economic Development Center. If not paid within 30 days following demand hereunder, the unpaid principal of this Note, and all other sums due under this Note or any instrument securing this Note, shall bear interest at the rate of 10 % per annum after demand until paid.

Upon default, the Holder may employ an attorney to enforce the Holder's rights and remedies, and the maker, principal, surety, guarantor, and endorsers of this Note hereby agree to pay the Holder reasonable attorney's fees not exceeding a sum of 15% of the outstanding balance owing on the Note, plus all other reasonable expenses incurred by the Holder in exercising any of the Holder's rights and remedies upon defaults. The rights and remedies of the Holder as described in this Note and any instrument securing this Note shall be cumulative and may be pursued singly, successively, or together against the property described in any such security instrument, or any other funds, property, or security held by the Holder for payment or security, in the sole discretion of the Holder. The failure to exercise any such right or remedy shall not be a waiver or release of such rights or remedies or the right to exercise any of them at another time.

All parties to this Note, including the Borrower and any sureties, endorsers, or guarantors hereby waive protest, presentment, notice of dishonor, and notice of acceleration and maturity and agree to remain bound for the payment of principal, interest, and all other sums due under this Note or the Agreement and any instrument securing this Note or the Agreement notwithstanding any change or changes by way of release, surrender, exchange, modification, or substitution of any security for this Note, or by way of any extension or extensions of time for the payment of principal and interest; and all such parties waive all and every kind of notice of such change or changes and agree that the same may be made without notice or consent of any of them.

Holder shall not, by any act, delay, omission, or otherwise, be deemed to have waived any of its rights under this Note or the Agreement. No waiver by the Holder of any of its rights under this Note or the Agreement shall be valid unless in writing, and then only to the extent therein set forth. Waiver by the Holder of any right or remedy under the terms of this Note or the Agreement on any one occasion shall not be construed as a bar to the Holder exercising any right or remedy on any future occasion. This Note may not be amended, changed, or altered except in writing executed by the Holder and the Borrower.

This Note evidences a debt payable by the Borrower.

DCP If initialed by the Borrower, this Note is secured by a deed of trust on certain property owned by the Borrower.

The law governing this transaction shall be that of the State of North Carolina, excluding its conflict of laws provisions. Any capitalized term not defined in the Promissory Note shall have the meanings ascribed in the Agreement.

IN WITNESS WHEREOF, the undersigned has (have) caused these presents to be executed under seal, pursuant to authority duly given, the day and year first above written.

Dated as of August 15, 2012.

If By Individual: Borrower: DC Plus LLC (SEAL)  
 Borrower Printed Name: DC PLUS LLC

**Request approval of Community Development Block Grant (CDBG) documents**

Chairman Swanger recognized David Teague, Grants Coordinator. Mr. Teague explained that as part of the CDBG, the scattered site housing rehabilitation program and funding approval documents were required. He noted that Mountain Projects would be administering the grant.

Commissioner Upton motioned to approve the Scattered Site Housing Rehabilitation Program Agreement and Funding Approval Conditions as presented. Commissioner Ensley seconded; the motion carried unanimously.



North Carolina Department of Commerce  
Community Investment and Assistance  
Community Development Block Grant Program

(Scattered Site Rehabilitation)  
Grant Agreement

(Haywood County)

Upon execution of this grant agreement, the North Carolina Department of Commerce (DOC) agrees to provide to (Haywood County) the "Recipient" and collectively with DOC, the "Parties", Community Development Block Grant (CDBG) assistance under Title I of the Housing and Community Development Act of 1974, (P.L. 93-383), as amended, authorized (and subject to Recipient's compliance with) the DOC funding approval, the North Carolina Community Development Block Grant administrative rules, other applicable laws, rules, regulations, and all other requirements of DOC now or hereafter in effect. The grant agreement is effective on the date the grant agreement and funding approval are signed by the Recipient. The grant agreement consists of the program guidelines and the approved application, including the certifications, maps, schedules and other submissions in the application, any subsequent amendments to this document or the approved application and funding approval and the following general terms and conditions:

1. **Definitions.** Except to the extent modified or supplemented by the agreement, any term defined in the North Carolina Community Development Block Grant Administrative Rules, 4 NCAC 19L, shall have the same meaning when used herein.
  - (a) Agreement means this grant agreement, as described above and any amendments or supplements thereto.
  - (b) Recipient means **Haywood County** the entity designated as a recipient for grant assistance in the grant agreement and funding approval.
  - (c) Certifications mean the certifications submitted with the grant application pursuant to the requirements of Paragraph (e) of Rule .0407 of the North Carolina Community Development Block Grant Administrative Rules, 4 NCAC 19L.
  - (d) "Assistance" or "Grant" means the grant funds provided under this Agreement from funds allocated to the State of North Carolina from the Federal Treasury through the CDBG and supporting laws, rules, requirements and regulations, in the amount of **\$400,000.00** except as modified.
  - (e) Program means the community development program, project, or other activities, including the administration thereof, for which assistance is being provided under this Agreement and which is described in the Recipient's approved application, as may be modified.
  - (f) The date for receiving the grant means the date of the CI Director's signature on the Grant Agreement and Funding Approval.
2. **Timely Execution.** Due to the need to expedite the use and expenditure of CDBG funds, Recipient's failure to execute and return a copy of the Agreement within 60 days of the date of the CI Director's signature on the Grant Agreement and Funding Approval may be deemed by DOC to determine the funds are available for reallocation to other subrecipients.
3. **Obligations of the Recipient.** The recipient shall perform the Program as specified in the application approved by DOC as may be amended with DOC approval. The Recipient hereby certifies that it will comply with all applicable federal and state laws, regulations, rules and Executive Orders, pursuant to Paragraph (e) of Rule .0407 of the North Carolina Community Development Block Grant Administrative Rules, 4 NCAC 19L. The Recipient shall also comply with all other lawful requirements of DOC, all applicable requirements of the General Statutes of the State of North Carolina specifically N. C. G. S. 87-1-87-15.9 and any other applicable laws, rules, regulations, requirements, and Executive Orders currently or hereafter in force. Recipient is prohibited from any fraud, waste and abuse of CDBG funds by any person or entity. The rules contained in 4 N.C.A.C. 19L (as well as applicable federal rules and regulations) are part of the Agreement, except where specifically modified by applicable law, rule, regulation, DOC, the CDBG HUD Program Requirements and any subsequent amendments, regulations or clarifications to any of the foregoing.
 

Additionally, Recipient agrees to ensure compliance with respect to the Program and the Grant (and any of its proceeds) with all applicable federal and state laws, rules, regulations and requirements, including but not limited to the following (as each may be modified or amended): (1) the CDBG HUD Program Requirements; (2) Title I of the Housing and Community Development Act of 1974, as amended (42 U.S.C. 5301 *et seq.*), (3) existing CDBG laws, rules, regulations and requirements, as may be amended, including those set forth in 24 C.F.R., Part 570; (4) North Carolina laws, rules, regulations and requirements; (5) DOC guidance and requirements regarding CDBG now or hereafter in effect, including but not limited to: DOC's CDBG Guidelines and Application Instructions, and DOC bulletins or other guidance documents; and (6) Recipient's own approved CDBG application to DOC, as may be amended with DOC approval.
4. **Obligations of Recipient with Respect to Certain Third Party Relationships.** Recipient is responsible to DOC for ensuring compliance with the provisions of this Agreement and all applicable laws, rules, regulations and requirements, even when the recipient designates a third party or parties to undertake all or any part of the Program. The Recipient shall comply with all lawful requirements of DOC necessary to ensure that the program is carried out in accordance with the Recipient's certifications including but not limited to the certification of assumption of environmental responsibilities under Rule .1004 of the North Carolina Community Development Block Grant Administrative Rules, 4 NCAC 19L. If the Recipient contracts with or designates a third party to undertake all or part of the Program, the Recipient's contract with the third party must require the third party to comply with this

Agreement, all applicable laws, rules, regulations and requirements, including but not limited to the procurement standards set forth in 4 N.C. Administrative Code 19L .0908 as may be applicable.

Recipient shall likewise ensure that all subrecipient contracts regarding Grant funds or relating to the Program include all required contractual elements in order to be in compliance with all Federal, State and local laws, including but not limited to the provisions contained in 24 C.F.R. § 570.503, 24 C.F.R. § 85.37, and other provisions described throughout this Agreement, where applicable. In any event, the Recipient is liable to DOC and HUD for any improper expenditures, damage, loss or harm resulting from the failure of any person or entity to comply with any applicable law, rule, regulation or requirement regarding the Grant funds and/or the Program, including but not limited to an act or omission by a subrecipient or other third party. The Recipient agrees to periodically and rigorously monitor and audit its subrecipients and other third parties to ensure compliance with all applicable requirements.

Any subcontracts or subrecipient agreements entered into by the Recipient with Grant funds shall be subject to all terms and conditions of this Agreement. Payment of all subcontractors and subrecipients shall be the sole responsibility of the Recipient, and DOC shall not be obligated to pay for any work performed by any subcontractor or subrecipient. The Recipient shall be responsible for the performance of all subcontractors and subrecipients and shall not be relieved of any of the duties and responsibilities of this Agreement as a result of entering into subcontracts or subrecipient agreements.

5. **Changes to Agreement.** Recipient agrees that DOC may supplement or modify this Agreement as may be necessary to implement additional or modified Federal or State guidance regarding implementation of the CDBG program.
6. **Conflict of Interest.** Recipient agrees to comply with all applicable conflict of interest provisions, including but not limited to those found at 4 N.C.A.C. 19 L .0908 and .0914, N.C. Gen. Stat. § 14-234, 24 C.F.R. § 85.36, 24 C.F.R. § 570.489 (g) and (h), and 24 C.F.R. § 570.611, where applicable, copies of which may be obtained from DOC.

Except for eligible administrative or personnel costs, the general rule is that no persons described in the following sentence who exercise or have exercised any functions or responsibilities with respect to grant activities assisted under this Agreement or who are in a position to participate in a decision-making process or gain inside information with regard to such activities, may obtain a financial interest or benefit from a Grant-assisted activity, or have an interest or benefit from the activity, or have an interest in any contract, subcontract or agreement with respect thereto, or the proceeds there under, either for themselves or those with whom they have family or business ties, during their tenure or for one year thereafter.

The conflict of interest summary in the sentence above generally applies to any person who is an employee, agent, consultant, officer, or elected official or appointed official of the state, or of a unit of general local government, or of any designated public agencies, or Recipient or applicable third parties which are receiving CDBG grant funds.

Recipient agrees to include these same prohibitions in all such contracts or subcontracts with any subrecipients or other third parties relating to the Program.

In any event, the Assistance provided under this Agreement shall not be used in the payment of any bonus or commission for the purpose of obtaining DOC approval of the application for such assistance, or DOC approval of applications for additional assistance, or any other approval or concurrence of DOC required under this Agreement, or the North Carolina Community Development Block Grant Administrative Rules, with respect thereto; provided, however, that reasonable fees or bona fide technical, consultant, managerial or other such services, other than actual solicitation, are not prohibited if otherwise eligible as program costs and allowed by applicable law.

Additionally, certain limited exceptions to the conflict of interest rules listed in 24 C.F.R. § 570.489 may be granted in writing by HUD and/or DOC upon written request and the provision of information specified in 24 C.F.R. § 570.489(h)(ii)(4).

7. **Reimbursement to DOC for Improper Expenditures.** The Recipient will reimburse DOC for any amount of Grant assistance improperly expended, either deliberately or non-deliberately, by any person or entity. Additionally, a contract for administrative services shall include a clause holding the administrator organization responsible for reimbursement to the Recipient for any improperly expended grant funds that had to be returned to DOC.
8. **Recordkeeping Requirements.** Recipient will maintain any and all records and comply with all responsibilities as may be required under typical CDBG recordkeeping (for example, records and responsibilities set forth in 4 N.C.A.C. 19L.0911 ("Recordkeeping"), 24 C.F.R. 570.490 ("Recordkeeping Requirements"), 24 C.F.R. § 570.506 ("Records to be maintained") and 24 C.F.R. § 85.42 ("Retention and Access Requirements for Records") as each may be modified by HUD or DOC) as well as records and responsibilities related to CDBG or specifically to CDBG funds. Recipient agrees to comply with any additional record-keeping requirements now or hereinafter set forth by DOC, HUD or any other federal or state entity.
9. **Access to Records.** The Recipient shall provide any duly authorized representative of DOC, the State of North Carolina, the federal Department of Housing and Urban Development (HUD), and the Comptroller General, the Inspector General and other authorized parties at all reasonable times access to and the right to inspect, copy, monitor, and examine all of the books, papers, records, and other documents relating to the grant for a period of five years following the completion of all close-out procedures. All original files shall be maintained at the Local Government offices for access purposes.
10. **Release of Personal, Financial and Identifying Information.** To ensure and document compliance with CDBG income requirements as well as other matters, Recipient shall obtain and retain personal, income-related, financial, tax and/or related information from companies, individuals and families that are benefitting from Grant or Program funds. Additionally, Recipient is obligated to provide access to any and all information relating to the Program to DOC, HUD or some other appropriate federal or state monitoring entity, upon DOC's request. This obligation includes, but is not limited to, the personal, financial and identifying information of individuals assisted by the Program. As such, Recipient shall obtain any releases or waivers from all individuals or entities necessary to ensure that this information can be properly and legally provided to appropriate federal and state entities, including DOC and HUD, without issue or objection by the individual or entity.
11. **Project Savings.** The Recipient is obligated to contribute 100 percent of its pledged **cash** contribution to the CDBG project even if the project experiences a savings after authorized activities are completed. Any project savings accrue to the CDBG program. **Substitution of in-kind contributions for cash is not allowed.**
12. **Expenditure of Non-CDBG Funds.** The recipient must ensure that non-CDBG funds are expended along with CDBG funds, following the implementation schedule described in the approved application and modified by the Performance Contract (or otherwise with DOC approval), and shall report on non-CDBG expenditures with each Annual Performance Report, consistent with Section .1100 PERFORMANCE of the program regulations (4NCAC 19L) as well as any other applicable reporting requirements.
13. **Method of Payment.** The Department of Commerce uses the Office of State Controller (OSC) to make CDBG payments to units of local government. The Electronic Payment Form from OSC must be completed for funds to be electronically transferred. **Arrangements must be made** with the Finance Officer in Community Investment and Assistance if a Recipient does not want to use the electronic funds transfer.
14. **Fair Housing.** Recipients of CDBG funds are required to comply with fair housing and non-discrimination laws and regulations. Recipients should consult Section .1001 of the CDBG administrative rules for further information on equal opportunity requirements. Recipients are required to submit a fair housing plan for its jurisdiction. Recipients with 10,000 persons or more will be required to complete an Analysis to Impediments to Fair Housing Choice Study. For each grant year that a CDBG project is active, a Recipient must describe the actions it will take in the areas of enforcement, education and removal of barriers and impediments to affirmatively further fair housing. Guidance for developing a Fair Housing Plan can be found in CDBG Bulletin 10-25 and the CDBG Compliance Plans and Templates ([www.nccommerce.com/cd/investment-assistance/forms-resources](http://www.nccommerce.com/cd/investment-assistance/forms-resources)).
15. **Equal Employment and Procurement Opportunity.** A Recipient must describe the actions it will take annually while the grant is open in the areas of enforcement, education and removal of barriers and impediments that affirmatively further equal access in employment and procurement. This includes a description of steps to be taken in the areas of advertisement, compliance and complaint tracking.

16. **Local Economic Benefit (Section 3 Regulation).** For each year that a CDBG is active, the Recipient must describe a strategy whereby opportunities in employment and procurement arising out of a CDBG assisted project are identified and made available to low-income residents within the CDBG assisted area to the greatest extent feasible. This strategy must include (1) identification of training and technical assistance resources to prepare low-income residents for employment and procurement opportunities, (2) attempts to reach the numerical targets for new hires set forth in the Section 3 regulation, which applies to Recipients receiving \$200,000 or more in non-administrative line items expended for construction contracts and (3) education of low-income residents within the CDBG assisted area about the components and opportunities of the program.

In addition, Recipients will be required to coordinate additional activities as it relates to Section 3 with the DOC CDBG Compliance Office.

17. **Section 504 and ADA.** Recipients must complete the Section 504 Survey and Transition Plan. This plan will not satisfy all the requirements of the Americans with Disabilities Act, but it will meet the minimum requirements for a CDBG assisted project.
18. **Environmental Review.** Recipients of CDBG funds are required to complete the document entitled "Environmental Review Procedures for the CDBG Program." Once the Environmental Review Record (ERR) is received, CI will review for completeness and submit selected CDBG ERRs if required to the State Clearinghouse for other State agencies to review and comment. Recipients cannot conduct any program activities until CI issues an environmental clearance.
19. **Language Access Plan (LAP).** Recipients of Federal financial assistance have an obligation to reduce language barriers that can preclude meaningful access by Limited English Proficient (LEP) persons to important government programs, services, and activities. Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000(d) and its implementing regulations require that Recipients take responsible steps to ensure meaningful access by LEP persons. Recipients will be required to submit a language access plan using the approved template from CI. The plan will address the LAP policy, translation of required vital documents, and requirements for citizen participation.
20. **Procurement Standards.** Where applicable, Recipient shall follow the procurement standards established in the "Administrative Requirements for Grants and Cooperative Agreements to State, Local and Federally Recognized Indian Tribal Governments" (24 C.F.R., Part 85) and HUD implementing regulations contained in 24 C.F.R. § 570.489(g), which explicitly prohibit cost plus a percentage of cost and percentage of construction cost methods of contracting. 4 N.C.A.C. 19L.0908.
- Any Recipient or Subrecipient shall follow other applicable procurement standards set forth in 4 N.C.A.C. 19L.0908, and the relevant laws cited therein, including but not limited to, laws related to conflicts of interest (N.C.G.S. §14-234), public building contracts (N.C.G.S. § 148-128 to 135), and payment and performance bonds (N.C.G.S. § 44A-25 through 35); acquisition and relocation (4 N.C.A.C. 19L.1003); property management standards (4 N.C.A.C. 19L.0909); equal opportunity (4 N.C.A.C. 19L.1001); and labor standards (4 N.C.A.C. 19L.1006).
  - Recipient shall likewise follow all other applicable federal and state procurement rules, guidelines and procedures, including those set forth in Office of Management and Budget Circular No. A-87 ("Cost Principles for State and Local Governments").

In any event, per 24 C.F.R. 570.489(g), all purchase orders and contracts shall include any clauses required by Federal statutes, executive orders and implementing regulations.

Additionally, Recipient acknowledges and agrees that, in its conduct under this Agreement and in connection with any and all expenditures of Grant funds made by it, Recipient, its officers, agents and employees shall be and are subject to the provisions of the North Carolina General Statutes and the North Carolina Administrative Code relating to and governing procurement, public contracts, suspension and debarment. Recipient further acknowledges and agrees that, in the event that it grants any of the Grant funds awarded hereunder to one or more subrecipients or other applicable entities, Recipient shall, by

contract, ensure that the provisions of all applicable laws relating to and governing procurement, public contracts, suspension and debarment are made applicable to and binding upon any and all subrecipients and/or other applicable entities.

21. **Labor Standards.** Recipient shall follow all applicable laws, rules and regulations concerning the payment of wages, contract work hours, safety, health standards, and equal opportunity for CDBG-R programs, including but not limited to the rules set forth in 4 N.C.A.C. 19L.1006, 24 C.F.R. § 570.603 and the following (as may be applicable to CDBG-R projects):
- Davis-Bacon Act (40 U.S.C.A. 276a). Among other provisions, this act requires that prevailing local wage levels be paid to laborers and mechanics employed on certain construction work assisted with CDBG funds.
  - Contract Work Hours and Safety Standards Act (40 U.S.C.A. 327 through 333). Under this act, among other provisions, laborers and mechanics employed by contractors and subcontractors on construction work assisted with CDBG funds must receive overtime compensation at a rate not less than one and one-half the basic rate of pay for all hours worked in excess of forty hours in any workweek. Violators shall be liable for the unpaid wages and in addition for liquidated damages computed in respect to each laborer or mechanic employed in violation of the act.
  - Fair Labor Standards Act (29 U.S.C. 201 et seq.), requiring among other things that covered employees be paid at least the minimum prescribed wage, and also that they be paid one and one-half times their basic wage rate for all hours worked in excess of the prescribed work-week.
  - Federal anti-kickback laws (18 U.S.C. 874 and 40 U.S.C. 276), which, among other things, outlaws and prescribes criminal penalties for "kickbacks" of wages in federally financed or assisted construction activities. Weekly statements of compliance and weekly payrolls must be provided by all contractors and subcontractors.

Recipient agrees to maintain records regarding compliance with the laws and regulations cited in 4 N.C.A.C. 19L.1006 (including the citations listed above) in accordance with 4 N.C.A.C. 19L.0911.

All contracts between Recipient and third parties shall contain labor standards provisions as required in 4 N.C.A.C. 19L.1006.

22. **Architectural Barriers.** Per 4 N.C.A.C. 19L.1007, 24 C.F.R. §§ 570.487 and 570.614 and other applicable law, all applicable buildings or facilities designed, constructed or altered with CDBG Grant funds shall be made accessible and useable to the physically handicapped as may be required by applicable laws, rules, regulations or requirements. Additionally, Recipient must comply with the following (as may be applicable to CDBG projects):
- Architectural Barriers Act of 1968 (P.L. 90-480). This act requires Recipient to ensure that certain buildings constructed or altered with CDBG funds are readily accessible to the physically handicapped.
  - Minimum Guidelines and Requirements for Accessible Design 36 C.F.R. Part 1190. These regulations establish guidelines for implementing the federal acts described in 4 N.C.A.C. 19L.1007(1)(a). The regulations provide technical standards which must be met by Recipient.
  - Americans with Disabilities Act ["ADA"] and the ADA Accessibility Guidelines for Buildings and Facilities or the Uniform Federal Accessibility Standards.
  - North Carolina Building Code, Volume I, Chapter 11-X. These provisions describe minimum standards Recipient must meet in constructing or altering building and facilities, to make them accessible to and useable by the physically handicapped.
23. **Change of Use of Real Property.** Recipient agrees not to change the use or planned use of any property acquired with CDBG funds from that for which the acquisition or improvement was made, in accordance with this Agreement and applicable law, rule, regulation or requirement, unless (i) the DOC grants explicit written approval and (ii) the requirements of 24 C.F.R. § 570.489(j), 24 C.F.R. § 570.505 and other applicable requirements are followed, as modified (or as may be modified) by HUD or DOC.
24. **Obligation of Recipient With Regard to Vacant Units.** The recipient shall ensure that all vacant units being rehabilitated will be occupied by a low or moderate income person by the time close-out occurs.
25. **Utility Assessments or Fees:** Assessments or fees to recover the CDBG funded portion of a utility project may be charged to properties not owned and occupied by low and moderate income persons. Such assessments are program income and, as such, must be used for eligible CDBG activities that meet a CDBG national objective.

26. **False or Misleading Information.** Recipient is advised that providing false, fictitious or misleading information with respect to CDBG funds may result in criminal, civil, or administrative prosecution under 18 U.S.C. § 1001, 18 U.S.C. § 1343, 31 U.S.C. § 3729, 31 U.S.C. § 3801, or another applicable statute. Recipient shall promptly refer to DOC and HUD's Office of the Inspector General any credible evidence that a principal, employee, agent, contractor, sub-grantee, subcontractor, or other person has submitted a false claim under the False Claims Act or has committed a criminal or civil violation of laws pertaining to fraud, conflict of interest, bribery, gratuity, or similar misconduct involving CDBG funds.
27. **Disputes with DOC.** If Recipient has any disagreement or dispute with any action or inaction by DOC, Recipient shall inform DOC by letter addressed to Vickie L. Miller, Director, Department of Commerce – Division of Community Investment and Assistance, 4313 Mail Service Center, Raleigh, NC 27699-4313. The Division of Community Investment and Assistance ["CI"] will endeavor to respond in writing to said letter within 30 days from receipt. Recipient shall not be entitled to a hearing under Chapter 150B for matters described in N.C. Gen. Stat. § 150B(c)(8), added by N.C. Senate Bill 960, including matters related to "contracts, disputes, protests, and/or claims arising out of or relating to the implementation of the [CDBG]." This includes actions arising out of or related to this Agreement or the Program.
28. **Disputes or Complaints by Subrecipients or Other Entities.** Recipient is responsible for developing, implementing and utilizing its own dispute resolution procedures with respect to disputes and/or complaints between and among Recipient, a Subrecipient, a contractor and/or any other person or entity (other than DOC). This includes (but is not limited to) procedures relating to procurement disputes or protests discussed in 24 C.F.R. 85.36. In the event of a dispute between and among Recipient, any Subrecipient, contractor and/or any other persons or entities (not including DOC), Recipient shall make every effort to resolve the dispute pursuant to its own dispute resolution procedures and shall issue a final decision on the matter as soon as is reasonably practicable. Recipient's dispute resolution procedure shall provide that, in the event that any party to such a dispute or complaint is dissatisfied with the final decision or other resolution provided by Recipient, the dissatisfied party shall appeal to the North Carolina Superior Court in an appropriate County for a trial de novo, to the extent that jurisdiction is proper pursuant to N.C. Gen. Stat. § 7A-240 and other applicable law.
29. **Schedules**
- (a) **Schedule for Release of Conditions and Completion Activities.** The Recipient must satisfy all Funding Approval Conditions to release CDBG funds within 4 months from the date (October 22, 2012) the Grant Agreement and Funding Approval were signed by the CI Director. The recipient must draw down all CDBG funds, expend all local non-CDBG funds and complete all project activities in conformance with the activities implementation schedule in the application as modified by the Performance Based Contract.
- (b) **The Recipient must obligate all funds within 27 months (September 22, 2014) from the date the Grant Agreement and Funding Approval are signed by CI Director.**
- (c) **All funds are to be expended within 30 months (December 22, 2014) from the date the Grant Agreement and Funding Approval are signed by CI Director. Any remaining funds will be de-obligated.**
- (d) **All closeout documents must be submitted to CI by (March 22, 2015) or within 3 months of all funds drawn down and expended, whichever comes first.**
- (e) **Schedule for Submission of Compliance Documents.** The Recipient must submit the following compliance documents within the specified number of months from the date the Grant Agreement and the Funding Approval were signed by the CI Director:
- **Environmental – 4 months (October 22, 2012)**
  - **Equal Employment and Procurement Plan – 4 months (October 22, 2012)**
  - **Fair Housing – 4 months (October 22, 2012)**
  - **Section 3 Plan – 4 months (October 22, 2012)**
  - **Analysis of Impediments- 4 months (October 22, 2012)**
  - **Request for Release of Funds – 5 months (November 22, 2012)**
- (f) **Timely Draw down of Funds.** Recipient is required to draw down activity funds monthly after they are given the authority to use funds. If this requirement is not met, the grantee will be subject to review and remedies as stated in 04 NCAC 19L.1104.
30. **Quarterly Progress Report.** Per Bulletin 11-7, Recipient shall ensure that a quarterly progress report that reflects approved CDBG program activity progress and CDBG financial status is presented to Recipient's elected board and a copy of that report, endorsed by the Chief Elected Official or the county/city/town manager will be provided to DOC not later than the fifteenth (15<sup>th</sup>) day of the month following the ending month of the reporting period.
31. **Performance Measures**  
The CPD Performance Measurement System is HUD's response to the standards set by the Government Performance and Results Act (GPRA) of 1993. This act holds all Federal agencies accountable for establishing goals and objectives and measuring achievements.
- (a) The recipient must ensure that all activities in the funded project(s) meet the appropriate objectives, outcomes, and indicators established by HUD and selected by DOC. CDBG funds cannot be used to pay for any activity that does not meet the above requirement.
- (b) The recipient must also assist DOC, when requested, in collecting indicators and any other data necessary to fulfill the requirements of the CPD Performance Measures System, which includes data for the Integrated Disbursement and Information System (IDIS).

Upon execution of this agreement by DOC and the Recipient, the Recipient hereby accepts the assistance on the terms of this grant agreement effective on the date indicated below, and further certifies that the official signing this document has been duly authorized by the recipient's governing body to execute this Grant Agreement.

Secretary of the Department of Commerce

Date: 6/22/12

By: Vickie L. Miller  
Vickie L. Miller  
Director  
Community Investment and Assistance

Date: 9/10/12

Mark S. Swanger  
Name of Recipient

By: Mark Swanger  
Signature of Authorized Official

Chairman, Board of County Commissioners  
(Title)


**Community Investment & Assistance  
Community Development Block Grant Program  
Funding Approval**

<b>1. Name and Address of Recipient</b> Haywood County 215 N. Main Street Waynesville, North Carolina 28786	<b>2. Grant Number and Funding Approval Date</b> GrantNumber : 11-C-2315 Date of Original Funding Approval : 06/22/12 Date of Amended Funding Approval :
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3. Approved Projects	Approved Amount
C1 Scattered Site Housing Program	\$400,000.00
<b>Total Grant Award</b>	<b>\$400,000.00</b>

**4. Funding Approval Conditions**  
 The following conditions must be removed in writing by Community Investment & Assistance(CI) in order for all funds to be released for the approved project(s) listed in item (3) , above:

**A. Environmental Condition:**  
 No funds may be obligated or expended in any project activity except for the administration activity in the C-1 project until the recipient has complied with the Environmental Review Procedures for the N.C. CDBG Program and the CDBG regulations contained in 4 NCAC 19L.1004.

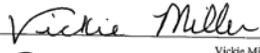
**B. Citizen Participation and Compliance Condition:**  
 No funds may be obligated or expended in any project activity except for the administration activity until CI is provided with the following documentation of compliance with citizen participation requirements in the application process [4NCA 19L.1002(b)]: publisher's affidavits of notices for and minutes signed by the town (or the county as applicable) clerk of the two required public hearings.

**C. Administration Contracts/Inter-local agreements Condition:**  
 No funds may be obligated or expended in any project activity except the administration activity until the recipient has submitted either a copy of the contract awarded for administration of this grant or a statement signed by the CEO stating that the contract will be administered internally.

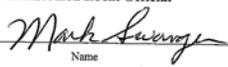
**D. Performance Based Contract Condition:**  
 No funds may be obligated or expended in any project activity except for the administration activity until the recipient has returned to CI one copy of the properly completed Performance Based Contract signed by the CEO.

**E. Use of Experienced CDBG Administrator:**  
 No funds may be obligated or expended for the administration activity until the recipient has submitted a statement signed by the CEO stating that they will be using an experienced CDBG administrator or local government staff. This person should be one who has actually administered more than one (1) CDBG project. Please note that if issues result from the CDBG administrator, the local government will be subject to 4 NCAC 19L.

**5. Signature of Authorized Official**


6/22/12  
 Name \_\_\_\_\_ Date \_\_\_\_\_  
 Vickie Miller  
 Title \_\_\_\_\_

**6. Signature of Authorized Local Official**


9/10/2012  
 Name \_\_\_\_\_ Date \_\_\_\_\_  
 Chairman, Board of County Commissioners  
 Title \_\_\_\_\_

**Request approval to engage a Financial Analyst for refunding school bonds or other refunding opportunities and rating agency preparation**

Chairman Swanger recognized Ms. Davis. Ms. Davis noted that over the past decade Haywood County has had multiple financing endeavors including general obligation bonds, certificates of deposits, various installment loans and private placements. During this time, rates have been low with little opportunity for refinancing. She explained that as some of these items reach callable dates, it makes sense to refund or refinance of some of these current loans.

Ms. Davis recommended the engagement of a Financial Analyst to proceed with refunding. She explained that the financial analyst has scenario driven software, market review and rate negotiation capabilities. Ms. Davis has been working with two groups, unofficially, and requested approval of the agreement with FirstSouthwest due to lower service cost.

Vice-Chairman Kirkpatrick requested that Ms. Davis obtain a cost-estimate from FirstSouthwest for services in the event that a refunding does not occur. Ms. Davis will obtain this estimate.

Commissioner Sorrells explained that he had spoken with Ms. Davis and noted that there were additional services available with FirstSouthwest even if refunding did not occur. Ms. Davis confirmed. She explained that the financial analyst would be assisting in preparation for rating agencies including development of formal fiscal policies as well as the review for refunding.

Vice-Chairman Kirkpatrick motioned to approve FirstSouthwest as a financial analyst for the refunding as described. Commissioner Ensley seconded; the motion carried unanimously.

**ADJOURNMENT**

Commissioner Upton made a motion to adjourn the regular Board meeting. Commissioner Ensley seconded, and the motion carried unanimously.

The time of adjournment was 7:40 p.m. The DVD is attached by reference to the minutes.

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CLERK

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CHAIRMAN