

## **HAYWOOD COUNTY COMMISSIONERS**

### **REGULAR MEETING – February 20, 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, Finance Director Julie Davis, Public Information Officer David Teague, and Executive Assistant/Deputy Clerk Amie Owens.

County Attorney Leon M. “Chip” Killian, III arrived at 5:37 p.m.

#### **PLEDGE OF ALLEGIANCE**

Chairman Swanger led the pledge of allegiance.

#### **INVOCATION**

Commissioner Upton offered the invocation.

#### **PUBLIC HEARING**

Chairman Swanger noted the first item on the agenda as a public hearing for the purpose of receiving public input on proposed changes to the County’s Slope Ordinance. Chairman Swanger opened the public hearing and recognized Marc Pruett, Erosion and Sediment Control Director. Mr. Pruett acknowledged Mr. John McCann and his contribution to the review and revision of this ordinance. Suggested changes to the ordinance include revision of the title of oversight from County Engineer to Engineering Coordinator, and other minor revisions endorsed by the Engineering Review Board and the County Attorney. A copy of the Slope Ordinance with the proposed changes has been posted on the County website.

Chairman Swanger asked if there were any individuals who would like to comment regarding the ordinance. No public response was received. Chairman Swanger inquired if other comments had been received either via contact with the County Manager’s office or via contact with the Commissioners. There was none.

Chairman Swanger closed the public hearing.

## **PUBLIC COMMENT SESSION**

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.

Chairman Swanger recognized Ellen Pitt. Ms. Pitt invited board members to attend a reception on March 4, 2012 at 6:00 p.m. at the Colonial Theatre in Canton to honor Haywood County agencies who work to reduce the number of driving while impaired (DWI) incidents. A statewide awards ceremony will be held on February 24, 2012 in Raleigh; the Canton Police Department and School Resource Officer Scott Sluder will receive recognition. Ms. Pitt shared statistics related to the number of DWI arrests for January.

Chairman Swanger recognized Harley Caldwell. Mr. Caldwell asked about the lifetime insurance for County Commissioners. Chairman Swanger noted that this is a state statute with insurance available to commissioners with ten years of service. Mr. Caldwell asked members to 'keep the hospital.' Chairman Swanger noted that the main goals are to ensure that the interest of Haywood County taxpayers, and to protect the County. Vice-Chairman Kirkpatrick noted that job protection is also of key concern, and Commissioner Sorrells added that having a viable hospital is important. Vice-Chairman Kirkpatrick reminded all that the Hospital Authority owns the hospital property. The board would be involved if there is a sale or transfer of property, including approval of any loan on the property.

There being no further public comments, Chairman Swanger closed the public comment session.

## **CONSTITUENT CONCERNS**

Chairman Swanger noted that there was a board retreat earlier and a variety of topics was discussed. This is the basis for budget and goal planning for the upcoming year.

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

There were no adjustments to the agenda.

## **CONSENT AGENDA**

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

- Approval of February 6, 2012 regular meeting minutes
- January 2012 Refunds, Releases, Amendments and Discoveries

- Budget Amendments:
  - Haywood County Schools – \$230,800 – for ADM projects already approved by board. Applications were sent to Department of Public Instruction (DPI); funding appropriations -75% from state with 25% county match; which was already budgeted for ADM projects (roofing projects).

HAYWOOD COUNTY  
CAPITAL PROJECT ORDINANCE AMENDMENT  
FISCAL YEAR 2011-2012

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, 2012.

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

Line Item	Account Number	Current Budget	Increase (Decrease)	Amended Budget
C/P - School - ADM/Lottery Fund				
new projects for 2012:				
C/O - Meadowbrook Elem. Sch.-reroof office area	495927-558000-2ADM1	-	99,000	99,000
C/O - Jonathan Valley Elem.Sch.-reroof office area	495976-558000-0ADM2	-	99,000	99,000
C/O - Central Elem. Sch. flat roof replacement	495975-558000-2ADM3	-	22,800	22,800
C/O - Central Elem. Sch. shingle roof replacement	495975-558000-2ADM4	-	10,000	10,000
		-	-	-
		-	-	-

which will result in a net increase of \$ 230,800 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
Intergovernmental Revenue:				
ADM funds - Public School bldg. fund	490050-459360-2ADM1	-	74,250	74,250
ADM funds - Public School bldg. fund	490050-459360-2ADM2	-	74,250	74,250
ADM funds - Public School bldg. fund	490050-459360-2ADM3	-	17,100	17,100
ADM funds - Public School bldg. fund	490050-459360-2ADM4	-	7,500	7,500
Transfer from General Fund - ADM Match	490110-498111-2ADM1	-	24,750	24,750
Transfer from General Fund - ADM Match	490110-498111-2ADM2	-	24,750	24,750
Transfer from General Fund - ADM Match	490110-498111-2ADM3	-	2,500	2,500
Transfer from General Fund - ADM Match	490110-498111-2ADM4	-	5,700	5,700
			230,800	-

The effect on the General Fund is as follows:

Transfer to Capital Project Fund-Public Sch.	119840-598049	-	57,700	57,700
Public Schools capital outlay ADM match	115912-563102	72,500	(57,700)	14,800
		-	-	-
		-	-	-

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

Adopted this the 20<sup>th</sup> day of February, 2012.

  
 Chairman  
 Haywood County Board of Commissioners

ATTEST  
  
 Clerk to the Board

Explanation:
To appropriate the amount requested by the school board for the current ADM projects. 75% state funding
25% county match.
Per approved application by BOCC and School board as well as Dept. of Public Instruction.

**NEW BUSINESS**

022012

### **Request to Auction Firearms at Annual Wild Game Dinner Fundraiser**

Chairman Swanger recognized the representative from Haywood Community College (HCC). Aaron Jones, Vice President, HCC Wildlife Club, requested permission to auction off four (4) firearms. Guns will have locks and be secure at all times. The event is on March 2, 2012. Mr. Jones noted that this fundraiser generated greater than \$10,000 last year.

Commissioner Ensley motioned to authorize the Haywood Community College Wildlife Club to auction four (4) firearms at their annual Wild Game Dinner on March 2, 2012. Vice Chairman Kirkpatrick seconded, the motion carried unanimously.

### **Celltower Solutions Contract**

Chairman Swanger recognized David Francis, Tax Administrator. Mr. Francis noted that since the last meeting, County Attorney Killian has reviewed the Celltower Solutions (CS) contract, and preliminary work with CS has occurred. This is for a cell tower audit to ensure proper evaluation of equipment costs for tax purposes.

Commissioner Sorrells motioned to approve the Celltower Solutions contract for a cell tower audit. Commissioner Upton seconded, the motion carried unanimously.

#### **AGREEMENT**

This AGREEMENT ("Agreement") made and entered into this 20<sup>th</sup> day of February, 2012 by and between Cell Tower Solutions, LLC ("Consultant"), located at 1130 Skipstone Drive, Watkinsville, GA 30677, and Haywood County, North Carolina, 215 North Main Street, Waynesville, NC 28786 ("County" or "Client). Each may be referred to as a "Party" and together as the "Parties".

Consultant and Client, for the consideration named and other good and valuable consideration, hereby agree as follows:

#### **1. PURPOSE**

Client hereby retains Consultant for the purpose of assisting with the discovery of cellular towers and cellular equipment located at wireless telecommunications facilities ("WFs") within Haywood County.

#### **2. SPECIFIC SERVICES**

As soon as reasonably possible after the execution of this Agreement, Client shall deliver to Consultant a current list of all known cellular tower and equipment assets within Haywood County ("Asset Discovery Report"). Consultant will work with Client to help determine a complete and accurate asset listing for computer and telecommunication equipment. Consultant will provide continued support throughout the discovery process. Consultant will provide Client with the documentation to substantiate an accurate assessment.

3. SPECIFIC SERVICES: DOCUMENTATION

The Consultant shall research and furnish accessible WF information in a comprehensive report that will generally include but is not limited to:

- (a) Cost of all facility improvements, including tower structure, and all equipment in use on WFs.
- (b) Cost of cellular base station equipment, including an inventory list of cellular equipment located on each tower within the community as long as access is granted to cell site. If access is denied, Consultant shall furnish an estimated value based on publicly available research and industry knowledge.
- (c) Digital pictures of towers and the number of carriers on each tower to allow assessor's office to know when another carrier has been added or equipment has been upgraded.

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- (d) Site specifications including latitude and longitude, ground elevation, height of structure, and type of tower.

The specific services set forth above shall be cumulatively referred to as the "Project".

4. TIMES AND ATTENDANCE: COOPERATION BY CLIENT

Consultant shall perform the services described herein, in as expeditious a manner as is reasonably possible with due consideration of the time requirements of Client. Client recognizes that the timing of the performance of Consultant's services may be affected by previous commitments to other clients (including the delivery of promised services and work product and previously scheduled meetings), and situations normally and traditionally deemed to be matters of a force majeure nature, including those influenced by the weather, strikes, or power outages.

Client agrees to cooperate with Consultant, as needed, and to provide Consultant with copies of any records, documents and other information needed for the fulfillment of this agreement on a timely basis. Client further agrees to provide Consultant with access to appropriate officials and/or employees of Client, as may be needed in the fulfillment of the Agreement. Moreover, both parties understand and agree that mutual accountability and responsiveness is critical to the successful completion of the Project, and therefore both shall always make their best faith efforts to be accountable and promptly responsive to each other.

5. COMPENSATION

In payment for the services to be performed hereunder by Consultant, Client shall make payments to the Consultant as follows:

- (a) For the services to be performed by the Consultant pursuant to paragraphs 2 and 3 hereof, Client shall pay Consultant fees based on the type of tower surveyed in Haywood County, North Carolina, as specified in Schedule A.
- (b) Consultant shall invoice Client upon delivery of Asset Discovery Report. Fifty percent (50%) of the invoice shall be due and payable upon receipt of the Asset Discovery Report, but in no case later than (30) days. Twenty-five percent (25%) will be payable at the end of the required appeal period, and the remaining twenty-five percent (25%) will be paid when the property owner fulfills payment to the County of ad valorem taxes assessed as a result of the discovery of assets.

In the event the County fails to recoup the cost of the service fees due to a successful appeal or through too little value in the tower and carrier property, then the Consultant will amend fees to be no more than 75% of the revised collected amount. This number will be calculated by the total income derived from all discovered and assessed WFs compared against the total fees charged. The total income will be calculated from the value assessed for the current tax year and the previous five years as allowed by the look back under North Carolina discovery laws. In the

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event fees have been paid to the Consultant exceeding the total collection, these fees will be remitted back to the County within 30 days of revised income statement.

6. APPEAL SERVICE

Consultant will support the Client in the appeals process by appearing before the Board of Equalization and Review to review the source data and answer questions regarding the specific appeal. Consultant will inventory equipment in sheds with carrier-supplied equipment lists. Equipment lists must be submitted to the Haywood County Tax Assessor a minimum of 24 hours before the scheduled site visit. Where possible all of the carrier's sheds shall be inventoried on the same day. The service is provided at no fee, but requires that customary expenses (mileage at a rate \$0.50/mile, and \$100.00/day per diem) will be reimbursed to the Consultant.

In the event the appeal is filed before the North Carolina Property Tax Commission or in Superior Court, the Consultant will provide expert testimony. The Consultant will be paid a fee of \$150.00 per hour, plus expenses as outlined above.

7. TERM OF AGREEMENT; TERMINATION

In the event that the Consultant refuses or fails to provide services hereunder, or is in material breach of any provision of this agreement, Client shall send Consultant written notice of such breach, and Consultant shall have thirty (30) days to cure breach; and, if at the end of said thirty (30) day period Consultant has not cured such breach, this agreement may be terminated by Client upon written notice. Notwithstanding any other provision of this agreement, Client may terminate this Agreement upon thirty (30) days' written notice to Consultant.

8. LIMITATION OF ACTIVITIES

The services performed under this agreement do not constitute a formal appraisal and due to the unique nature of these services, Consultant makes no representations that such services follow the Uniform Standards for Professional Appraisal Practice ("USPAP").

9. TERM OF AGREEMENT

This initial term of this Agreement will be one (1) year, commencing on the date set forth on page 1 of this Agreement. If through any cause, the Consultant or the Client fails to fulfill its obligations as provided by this Agreement, or materially violates any of the covenants or stipulations within this agreement, and such failure or violation continues for thirty (30) days after written notice thereof by one Party to the other, the Party against which the violation has occurred shall thereupon have the right to terminate this Agreement immediately upon giving written notice to the other Party. Said notice shall be delivered to the violating Party personally or mailed by certified mail to the mailing address as specified herein. In the event of termination, all pending discovery reports shall be terminated unless specifically authorized to be continued

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by the County Tax Assessor. All fees for completed discovery reports shall be payable in accordance with the terms as provided by this Agreement.

10. STATUS OF CONSULTANT

Consultant and Client agree that in the performance of Consultant's services hereunder, Consultant shall not be deemed to be an employee of Client for any purpose whatsoever.

11. LIMITATION OF LIABILITY

THE TOTAL LIABILITY OF EITHER PARTY UNDER THIS AGREEMENT, WHETHER IN CONTRACT, WARRANTY, TORT (INCLUDING, WITHOUT LIMITATION, NEGLIGENCE), STRICT LIABILITY OR OTHERWISE, WILL NOT EXCEED THE TOTAL PRICE PAID UNDER THIS AGREEMENT OR SUCH LESSER AMOUNT THEREOF AS IS ACTUALLY PAID BY CLIENT TO CONSULTANT. IN NO EVENT, WHETHER IN CONTRACT, WARRANTY, TORT (INCLUDING, WITHOUT LIMITATION, NEGLIGENCE), STRICT LIABILITY OR OTHERWISE, WILL EITHER PARTY BE LIABLE FOR SPECIAL, INCIDENTAL, INDIRECT, EXEMPLARY, PUNITIVE, OR CONSEQUENTIAL DAMAGES, INCLUDING, WITHOUT LIMITATION, ANY LOSS OF PROFIT OR REVENUE.

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12. DISCLAIMER OF WARRANTIES

CONSULTANT DOES NOT MAKE, AND HEREBY DISCLAIMS ALL WARRANTIES AND REPRESENTATIONS OF ANY KIND, STATUTORY, EXPRESS OR IMPLIED, TO THE PURCHASER EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT.

13. NOTICES

Any and all notices, invoices, and payments required hereunder shall be addressed to the Parties at their respective addresses set forth on page 1 hereof, or to such other address as may hereafter be designated in writing by either Party hereto.

14. CONSTRUCTION OF AGREEMENT

This Agreement shall be construed and interpreted in accordance with the Laws of the State of North Carolina.

15. COMPLETE AGREEMENT: MODIFICATION

There are no terms, conditions or obligations other than those contained herein, and there are no written or verbal statements or representations, warranties or agreements with respect to this Agreement that have not been embodied herein. This Agreement constitutes the complete understanding of the Parties with respect to the subject matter hereof. No modification or

amendment of any provisions of this agreement shall be valid unless in writing and signed by both Parties.

IN WITNESS THEREOF, the Consultant executes this Agreement by persons duly authorized to do so, and the County executes this Agreement by its Chairman, attested by its Clerk, as authorized by its Board of Commissioners, to be effective as of the day and year first above written.

**CONSULTANT:**

**CELL TOWER SOLUTIONS, LLC**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**CLIENT:**

**HAYWOOD COUNTY**

By: Mark S. Swanger  
Mark S. Swanger  
Haywood County Board of Commissioners

**ATTEST:**

Marty Stamey  
Marty Stamey  
County Manager/Clerk to Board

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

[Signature]  
Financial Officer

**Budget Amendment – Celltower Solutions**

Chairman Swanger recognized Julie Davis, Finance Director. Ms. Davis explained the budget amendment.

- Tax Collections - \$58,000 – initial cost for performing audits; expectation that additional revenue will be generated, by June 30, from increased property tax collections.

Commissioner Upton motioned to approve the budget amendment for this project; Commissioner Sorrells seconded, the motion carried unanimously.

HAYWOOD COUNTY  
BUDGET ORDINANCE AMENDMENT  
FISCAL YEAR 2011-2012

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, 2012.

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

Department line item	Account Number	Current Budget	Increase (Decrease)	Amended Budget
Tax Collections:				
Professional Services - other contracts	114140-519900	23,060	58,000	81,060
which will result in a net increase (decrease) of \$			58,000	
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
Ad Valorem Tax				
2011 tax revenue	110010-411111	34,892,598	55,000	34,950,598
			58,000	

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

Adopted this the 20<sup>th</sup> of February, 2012.

  
 Chairman  
 Haywood County Board of Commissioners

ATTEST:

  
 Clerk to the Board

Explanation: To appropriate the initial funding to cover the contract for cell tower company valuation audits. Additional revenue is expected to cover the costs incurred by June 30.
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**Request approval for Occupancy Tax Resolution allowing Haywood County Tax Collector to collect and enforce**

Chairman Swanger recognized Lynn Collins, Executive Director of Haywood Tourism Development Authority (TDA). Ms. Collins noted that there has not been a definitive method of enforcement in place for collection of Occupancy Taxes. The TDA board and staff have worked with the County Manager, County Attorney, Finance Director, Tax Collector and received clarification from the NC School of Government. Mr. Killian noted that the duty for collecting these taxes does fall under the Tax Collector’s authority related to attachment, garnishment and levy. Mr. Killian drafted the proposed resolution. Commissioner Sorrells, as a member of the TDA board, noted that this has been an item of discussion multiple times.

Commissioner Upton motioned to approve the resolution presented regarding the collection of Occupancy Taxes. Commissioner Ensley seconded, the motion carried unanimously.

**RESOLUTION  
HAYWOOD COUNTY BOARD OF COMMISSIONERS  
REGULAR MEETING  
FEBRUARY 20, 2012**

WHEREAS, the Haywood County Tourism Development Authority ("TDA") was created by various resolutions of the Haywood County Board of Commissioners pursuant to GS 153A-155 as authorized by act of the North Carolina General Assembly under Section 16.1 of Part V of Chapter 908 of the 1983 Session Laws, as amended by Chapter 942 of the 1985 Session Laws (Regular Session 1986), Chapter 48 of the 1987 Session Laws, Chapter 540 of the 1995 session Laws, and Chapter 0337, Part V, of the 2007 Session Laws..

WHEREAS, in recent years, the TDA has had difficulty enforcing the responsibility of accommodations owners to collect the tax, file returns and pay the tax as required by GS 153A-155(b), (c), (d) and (e); and

WHEREAS, as authorized by GS 153A-147, a county may collect any county tax by use of the remedies of levy and sale, and attachment and garnishment, under the rules and according to the procedures prescribed by the Machinery Act (Chapter 105, Subchapter II) for the enforcement of tax liability against personal property, after the due date for the tax.

NOW, THEREFORE, the Haywood County Tax Collector is hereby authorized to collect and utilize such remedies as are available for the enforcement of tax liability against personal property after the due date for room occupancy taxes; and the County Attorney shall co-operate by initiation and pursuing of civil actions against persons and accommodations responsible for collection of the tax , filing of returns and remission of taxes as provided above in cases where remedies are not available to the Tax Collector, for the purpose of collection of occupancy taxes and penalties as provided by GS 105. All legal fees not collected from the responsible accommodation owner, shall be paid by the TDA.

Upon motion duly made and seconded, the above Resolution was adopted this the 20<sup>th</sup> day of February, 2012.

ATTEST:

  
\_\_\_\_\_  
Marty Stamey  
County Manger/Clerk to Board

HAYWOOD COUNTY

By:   
\_\_\_\_\_  
Mark S. Swanger  
Haywood County Board of Commissioners

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**Request for Historic Book Sales proceeds to be transferred to Haywood County Library for equipment upgrades**

Chairman Swanger recognized Bruce Briggs, Historical Society of Haywood County. Mr. Briggs noted that the County was due a portion of pre-sales of the Bicentennial of Haywood County book (40%) equaling \$4,800, and the historical society would like to match \$4,800, to be designated for the Haywood County Library.

Commissioner Ensley motioned to approve the book sale proceeds be combined with the like amount from the Historical Society and be transferred to the Haywood County Library. Commissioner Sorrells seconded, the motion carried unanimously.



Commissioner Sorrells motioned to approve the revised Memorandum of Understanding and Guidelines for the Haywood Spay/Neuter program. Commissioner Upton seconded, the motion carried unanimously.

BOARD OF COMMISSIONERS  
MARK S. SWANGER, CHAIRMAN  
J. W. "KID" KIRKPATRICK, III, VICE CHAIRMAN  
L. KEVIN ENSLEY  
BILL L. UPTON  
MICHAEL T. SORRELLS



COUNTY MANAGER  
MARTY STAMEY  
LEON M. KILLIAN, III  
COUNTY ATTORNEY

MEMORANDUM OF UNDERSTANDING  
Between Haywood County  
and  
Haywood Animal Welfare Assoc., Inc.  
D/B/A: Haywood Spay/Neuter

February 20, 2012

**Purpose:** To reduce the impacts of pet overpopulation in Haywood County by taking advantage of funds available through the N. C. State Spay/Neuter Program (NCGS Chapter 19A) for subsidizing the cost of spay/neuter surgery for low-income pet owners.

**Rationale:** Haywood Animal Welfare Assoc., Inc., (hereinafter referred to as Haywood Spay/Neuter) a local 501(c)(3) non-profit is now providing low and no-cost spay neuter services for low-income pet owners of Haywood County. To take advantage of the available funds Haywood County must have an operational Spay/Neuter Program.

**Terms:** Haywood County agrees to designate Haywood Spay/Neuter and names Haywood Spay/Neuter as its Spay/Neuter Program for the term of one year to be automatically renewed annually unless cancelled in writing by either party with thirty (30) days notice.

Haywood Spay/Neuter agrees to partner with Haywood County Animal Services to establish procedures and maintain data in accordance with the requirements of the N.C. State Spay/Neuter Program for reporting to and obtaining reimbursement from the fund.

The Haywood County Manager will review the application and backup documentation and submit the application to the state in accordance with the program requirements, currently, no later than the last day of the month following the close of each quarter.

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215 NORTH MAIN STREET • WAYNESVILLE, NORTH CAROLINA 28786  
PHONE: 828.452.6625 • FAX: 828.452.6715

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When the reimbursement funds from the state have been received by Haywood County the county will within 15 days transfer the funds received to Haywood Spay/Neuter by check payable to Haywood Spay/Neuter or electronic transfer to Haywood Spay/Neuter's bank.

During the term of this Memorandum of Understanding, Haywood Spay/Neuter will provide Haywood County a copy of the annual IRS Form 990 report when submitted and a copy of its CPA annual financial review when complete.

Signed this 20th day of February 2012

  
Marty Stanley, County Manager  
Haywood County, NC

  
Penny Wallace, Executive Director  
Haywood Animal Welfare Assoc., Inc.

Revised: Feb. 6, 2012

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**Approval to apply for Rural Center Grant for Sonoco Plastics under the Building Reuse and Rehabilitation Grant Program for Occupied Buildings**

Chairman Swanger recognized Mark Clasby, Executive Director, Economic Development Commission (EDC). Mr. Clasby explained that he would be asking for approval for three items related to Sonoco Plastics and EDC grants. The first item presented is the application for the Building Reuse and Rehabilitation grant from the Rural Center. This grant is for up to \$5,000 per new job created; the goal is creating 35 new jobs. All EDC grants in North Carolina are performance based.

Mr. Killian noted that the resolution related to the NC Building Reuse and Restoration Grants Program would require approval. Mr. Clasby added that the resolution is part of the application process.

Commissioner Sorrells motioned to approve Mr. Clasby to apply to the Rural Center Grant and adopt the resolution for the NC Building Reuse and Restoration Grants Program. Commissioner Upton seconded, the motion carried unanimously.

**RESOLUTION**

**NC Building Reuse and Restoration Grants Program**

WHEREAS, the Building Reuse and Restoration initiative of the North Carolina Rural Economic Development Center is designed to fund expansions and renovations of buildings currently in use if the project will create additional, private-sector jobs and spur economic activity in rural communities; and,

WHEREAS, Haywood County is engaged in activities to assist local industries and increase the number of jobs in the area; and,

WHEREAS, Haywood County intends to request grant assistance from the Building Reuse and Restoration Grant Program for construction costs of the expansion for Sonoco Plastics, Inc.,

NOW, THEREFORE, BE IT RESOLVED, BY THE COUNTY COMMISSIONERS OF HAYWOOD COUNTY:

That Haywood County will provide 5% of the grant amount for the expansion project, if approved for the grant.

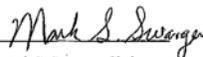
That Sonoco Plastics, Inc. will provide for efficient administration, implementation, and operation/maintenance of the project.

That the Executive Director of the Haywood County Economic Development Commission is hereby authorized to execute and file an application on behalf of Haywood County and Sonoco Plastics, Inc. with the North Carolina Rural Economic Development Center for a Building Reuse and Restoration Grant.

That the Executive Director is hereby authorized and directed to furnish such information as the North Carolina Rural Economic Development Center may request in connection with the grant application and project; to make assurances as contained above; and to execute such other documents as may be required in connection with the application.

That Haywood County has substantially complied or will substantially comply with all Federal, State, and local laws, rules, regulations, and ordinances applicable to the project and to the grants pertaining thereto.

Adopted this the 20th of February 2012

  
Mark S. Swanger, Chairman

ATTEST:

  
Marty Starnes, County Clerk

### **Request for Approval via the One North Carolina Fund Grant**

Mr. Clasby explained that there were various states competing for the expansion of the Sonoco facility. When competing against another state, under NC General Assembly, the One North Carolina Fund is available. Mr. Clasby asked for approval for the Local Government Grant Agreement (LGGGA) and Company Performance Agreement (CPA). Mr. Killian noted that LGGGA and CPA could be signed, but the final grant process would not be effective until all incentive agreements between Sonoco Plastics and the Town of Waynesville and Haywood County are executed. No monies shall pass between any agencies until all agreements are approved and executed.

Commissioner Sorrells motioned the One North Carolina Fund Grant be approved bearing in mind the contingent nature of the approval. Vice-Chairman Kirkpatrick seconded, the motion carried unanimously.

### **Appointment of Board of Equalization and Review Members**

Chairman Swanger recognized Marty Stamey, County Manager. Mr. Stamey noted that members should select five (5) individuals to serve. While the ballots were counted, Chairman Swanger moved to the next agenda item.

### **Clean Water Management Trust Fund Grant #2006A-014 – Pigeon River Buffer Project**

Chairman Swanger recognized Chip Killian, County Attorney. Mr. Killian explained that all documents have been reviewed. Eleven (11) conservation easements originally conveyed to Haywood County would be transferred to the State of North Carolina Clean Water Management Trust Fund. An easement was obtained for one additional property that was not included in the original 11.

Vice-Chairman Kirkpatrick motioned to approve the assignment of eleven (11) conservation easements to the North Carolina Clean Water Management Trust Fund. Commissioner Upton seconded, the motion carried unanimously.

Commissioner Sorrells motioned to approve the second conveyance to the Clean Water Management Trust Fund. Vice-Chairman Kirkpatrick seconded, the motion carried unanimously.

Prepared by:  
Clarence H. Dickson, III

STATE OF NORTH CAROLINA  
COUNTY OF HAYWOOD

CONSERVATION EASEMENT  
CWMTF Project No. 2006A-014

THIS CONSERVATION EASEMENT ("Conservation Easement") is made and executed on this 20 day of February, 2012, by and between HAYWOOD COUNTY (herein "Grantor") and STATE OF NORTH CAROLINA, by and through North Carolina Clean Water Management Trust Fund, an independent agency of the State with a mailing address of 1651 Mail Service Center, Raleigh, North Carolina 27699-1651 ("Fund"), a subdivision of the State of North Carolina, existing under the laws of the State of North Carolina (herein "Grantee").

RECITALS AND CONSERVATION PURPOSES

A. Grantor is the sole owner in fee simple of the property described in Exhibit "A" attached hereto and fully incorporated herein by reference.

B. The State of North Carolina ("State") has enacted the Uniform North Carolina Conservation and Historic Preservation Agreements Act (the "Act"), Chapter 121, Article 4 of the North Carolina General Statutes ("NCGS"), which provides for the enforceability of restrictions, easements, covenants or conditions "appropriate for retaining in land or water areas predominantly in their natural, scenic, or open condition..."

C. Grantor has agreed and desires to set aside and convey to Grantee, a Conservation Easement in and affecting all of the aforementioned property, which area is herein referred to as the "Property" or "Protected Property"; it is Grantor's intent and purpose to restrict the Property in order to preserve, enhance, restore, and maintain the natural features and resources of the Property, to provide habitat for native plants and animals, to improve, maintain and protect water quality, and to control runoff of sediment, (hereinafter referred to collectively as the "Conservation Values").

D. The Protected Property is described in Exhibit "A" attached hereto and hereby fully incorporated by reference.

E. Grantor and Grantee recognize that the Protected Property is located along the Pigeon River and tributaries thereto, which is deemed by the State of North Carolina to qualify as suitable for protection as a riparian buffer in order to address the cleanup and prevention of pollution of the State's surface waters, and as part of a network of riparian buffers. Moreover, Grantor and Grantee recognize that the Protected Property has other Conservation Values including fish and wildlife conservation, open space and scenic values.

F. The Clean Water Management Trust Fund is an agency of the State (herein "Fund") and is authorized by Article 18, Chapter 113A of the North Carolina General Statutes to finance projects and to acquire land and interests in land, including conservation easements for riparian buffers for purposes of providing environmental protection for surface waters and urban drinking water supplies and establishing a network of riparian greenways for environmental, educational, and recreational uses.

G. Grantor is a County of the State; it has received a grant from Fund, identified in Grant Agreement No. 2006A-014 ("Grant Agreement") in consideration of its acquisition of this Property for thus restricting the uses of the Property.

Grantor is a county of the State of North Carolina. Grantee is a sovereign entity and is, therefore, authorized to accept, hold, and administer interests in land including conservation easements, and is a "qualified organization" and an "eligible donee" within the meaning of Section 170(h)(3) of the Internal Revenue Code and regulations promulgated there under, and is an eligible holder of conservation easements within the meaning of NCGS Chapter 121, Article 4, the "North Carolina Conservation and Historic Preservation Agreements Act".

H. Grantor and Grantee have agreed that the Property shall be conserved and managed in a manner that will protect the quality of waters of the Pigeon River and streams tributary thereto, and otherwise promote the public purposes authorized by Article 18 Chapter 113A of the North Carolina General Statutes. The Grantee will receive and hold this Conservation Easement until at such time it conveys an Assignment of Conservation Easement to the State by and through the Fund, and the same is recorded in the Haywood County, North Carolina, Register of Deeds.

I. Grantor, Grantee, and Fund (collectively referred to as the "Parties") intend that the conservation and water quality value of the Property in their present state will be preserved and maintained to serve those purposes set forth by the said Grant Agreement entered into between Grantor and the Fund and incorporated herein by reference, and available for inspection at the offices of the North Carolina Department of Environment and Natural Resources, Grantee and Fund.

NOW, THEREFORE, in consideration of the promises and the mutual benefits recited herein, together with other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by the parties hereto, Grantor, for itself, its successors and assigns, hereby unconditionally and irrevocably gives, grants, and conveys forever and in perpetuity to State, and State, acting by and through the Fund does accept this Deed of Conservation Easement of the nature and character and to the extent hereinafter set forth, in and over, through and across the Property as shown on Exhibit "A", together with the right to preserve and protect the Conservation Values thereof as described in the Recitals therein.

ARTICLE I. PURPOSES & DURATION OF CONSERVATION EASEMENT

The purposes of this Conservation Easement are to protect wetlands, riparian areas and surface waters within the watershed where the Property is located, and to protect and preserve the forested, wildlife, natural heritage and other Conservation Values of the Property, to the end that the waters flowing over it and the waters into which those waters flow may be reserved in quality and protected in their present uses, without deleterious effects that may arise from the uses or development of the Property which are prohibited herein.

This Conservation Easement shall be perpetual. It is an easement in gross, and runs with the land, and is enforceable by Grantee, against Grantor, its successors, grantees, heirs, representatives, permittees, assigns, lessees, agents, and licensees.

No activity or use inconsistent with the purposes of this Conservation Easement shall be conducted, permitted, or allowed on the Property.

ARTICLE II. RIGHTS RESERVED TO GRANTOR

Grantor reserves certain rights accruing from the fee simple ownership of the Property, including the right to engage in or permit others to engage in the uses of the Property that are not inconsistent with the purposes of this Conservation Easements. All rights reserved by Grantor, are reserved for Grantors, their representatives, heirs, successors, and assigns, and are considered to be consistent with the conservation purposes of this Conservation Easement. Except for the specific restrictions and prohibitions made applicable herein to the Property, Grantor shall continue to own and may use the Property in any lawful manner. Grantor expressly reserves the following rights:

A. Passive Recreational Use. Grantor reserves the right to engage and to permit others to engage in passive recreational uses of the Property, requiring no surface alteration of the land, so long as the related alterations, construction, improvements, maintenance and activities and uses herein, pose no threat to the Conservation Values of the Property.

B. Public Use and Access. Grantor reserves the right to allow public access and use of the Property for the purpose of recreational activities, including, without limitation, conducting educational tours, scientific study, animal/plant observation, walking, fishing, picnicking, and any other purposes consistent with these accepted uses and maintaining conservation values. To accomplish the above uses, the Grantor may construct, maintain and repair naturally surfaced walking and hiking trails, one (1) observation/viewing platform, one (1) pedestrian foot bridge, and one (1) canoe/kayak access site. All improvements shall be subject to the prior approval of the Fund and to the terms and conditions set forth in the aforementioned Grant Agreement and Fund approved amendments.

C. Walking and Hiking Trails. Grantor reserves the right to construct naturally surfaced walking and hiking trails on the Property. All trails must be located at a minimum distance of fifteen (15) feet from the top of the bank of the Pigeon River and tributaries thereto, unless such locations are physically impracticable. In the construction of such trails and when required by the terrain, boardwalks, ramps and handrails are permitted herein. All trails and associated improvements must comply with the rules and regulations of the Americans with Disabilities Act of 1990, Title III regulations, ADA Standards for Accessible Design, 28CFR Part 36, revised July, 1994, and amendments thereto ("ADA"). The Grantor may also construct and maintain park benches, litter receptacles, and trail/feature signs along the walking and hiking trails. Placement, construction and location of all such trails must be approved by Haywood County.

D. Observation/Viewing Platform. Grantor reserves the right to construct, maintain and repair up to one (1) observation/viewing platform on the Property with optional bench seating, handrails, connecting steps and ramp as required by the terrain to be located on creek bank of the Pigeon River, as allowed and approved by the North Carolina Division of Water Quality, provided such platforms are connected to the walking and hiking trails constructed on the Property. Construction of said platforms must comply with the ADA and amendments thereto. All necessary care shall be taken to complete the construction of such features in a manner so as not to cause or allow sedimentation either during or after construction.

E. Pedestrian Foot Bridge. Grantor reserves the right to construct, maintain, repair and access up to one (1) pedestrian foot bridge to be constructed five (5) to ten (10) feet in width in compliance with the ADA and the most recent version of the "Guide Specifications for Design of Pedestrian Bridges" published by the American Association of State Highway and Transportation Officials ("AASHTO"). Such bridge may be located across the Pigeon River, provided such bridge is connected to the walking and hiking trails permitted herein. The bridge may include concrete footings. All necessary care shall be taken to complete the construction of such features in a manner so as not to cause or allow sedimentation either during or after construction.

F. Canoe/Kayak Access Site. Grantor reserves the right to construct, maintain and repair one (1) canoe/kayak site on the Property with launch and chute to be located on the bank of the

Pigeon River as allowed and approved by the Fund, provided such site is connected to the walking and hiking trails permitted herein. All necessary care shall be taken to complete the construction of such features in a manner so as not to cause or allow sedimentation either during or after construction.

Notwithstanding the foregoing, all amenities and improvements to be located on the Property must receive the prior written approval of the Fund, and must comply with the terms set forth therein and in the aforementioned Grant Agreement. The Grantor shall maintain the Property in a clean, natural and undisturbed state, and shall comply with all applicable land use regulations, and other applicable laws and ordinances. The total cleared, and not re-vegetated, pervious and impervious surface areas associated with all aforesaid improvements, including, but not limited to, the trails, boardwalks, ramps, steps, observation/viewing platform, pedestrian bridge and convenience facilities shall not exceed ten percent (10%) of the total area of the Property.

Furthermore, the Parties have no right to agree to any activity that would result in the termination of this Conservation Easement.

### ARTICLE III. PROHIBITED & RESTRICTED ACTIVITIES

Any activity on, or use of, the Property in consistent with the purposes of this Conservation Easement is prohibited.

The Property shall be maintained in its natural, scenic, wooded and open condition, and restricted from any development or use that would impair or interfere with the water quality protection and conservation purposes of this Conservation Easement, set out above.

EXCEPT for those rights specifically reserved to Grantors in Article II and without limiting the generality of the foregoing, the following is a listing of activities and uses which are prohibited, or where expressly stated, which may be permitted, on the Property. Grantor and Grantee have agreed that the activities specifically allowed do not and will not impair the Conservation Values of the Property.

A. Industrial and Commercial Use. All industrial and commercial activities and uses, and any right of passage for such purposes, are prohibited on the Property.

B. Agricultural, Timber Harvesting, Grazing and Horticultural Use. Agricultural, timber harvesting, grazing, horticultural and animal husbandry operations are prohibited on the Property. The Parties acknowledge that the Grantor has been utilizing portions of the property for agricultural and livestock grazing purposes. In cases where these activities are conducted outside the floodplain, such activities may continue. Further, this prohibition against agricultural use shall not limit small-scale gardening for family purposes.

C. Disturbance of Natural Features. No trees may be cut or removed, and the natural features of the Property may not be disturbed, except for: (i) as may be incidental to boundary marking, fencing, and signage allowed or required hereunder; (ii) selective cutting and prescribed burning or clearing of vegetation and the application of mutually approved pesticides and fire containment and protection, disease control, restoration of hydrology, wetlands enhancement and/or control of non-native plants, all subject however, to prior approval of the Fund; (iii) fishing pursuant to applicable federal, state and local rules and regulations; (iv) animal control, to include hunting and trapping, to the extent necessary to keep the animal population within numbers consistent with the ecological balance of the area and as pursuant to federal, state and local rules and regulations.

D. Construction of Buildings and Recreational Use. There shall be no construction or placement of any building, mobile home, asphalt or concrete pavement, billboard or other advertising display, antenna, utility pole, tower, conduit, line pier, landing dock or other temporary or permanent structure or facility on, above, or below the surface of the Property, except for the following: placing and display of no trespassing signs, locate, state or federal traffic or similar information signs, for sale or lease signs, fencing, signs identifying the Conservation Values of the Property, and/or signs identifying the Fund or Haywood County as the owner or source of funds for the Conservation Easements on the Property, educational and interpretive signs, identification labels or any other similar temporary or permanent signs, all subject, however, to the prior approval of the Fund.

E. Mineral Use, Excavation, Dredging. There shall be no filling, excavation, dredging, mining or drilling; no removal of topsoil, sand, gravel, rock, peat, minerals or other materials; and no change in the topography of the Property in any manner, except as may be necessary for the purpose of combating erosion or incidental to any conservation management practices otherwise permitted by this Conservation Easement.

F. Wetlands and Water Quality. No activities causing or contributing to pollution of or alteration of water bodies will be conducted, permitted, or allowed to continue on the Property; furthermore, no activities will be conducted, permitted or allowed to continue, to the detriment of water purity or that alter natural water levels or drainage, or that contribute to sedimentation, or that alter surface water flow, in or over the Property or into any surface waters adjacent thereto, or that may otherwise cause soil degradation or erosion; nor shall any diking, dredging, draining, piping, filling, or other activity causing any alteration to wetlands be conducted, permitted, or allowed to continue on the property, except activities to restore natural hydrology, or wetlands enhancement, as permitted by state and other appropriate authorities, and only then after and with the prior consent of Fund.

G. Dumping. Dumping of soil, trash, ashes, garbage, or waste, abandonment of vehicles, appliances, or machinery, or other waste or discarded materials, is prohibited on the Property.

H. Conveyance and Subdivision. The Property may not be subdivided or partitioned and shall remain in its current configuration as an undivided entity or parcel of land.

I. No Use as Mitigation Property. There shall be no use of the Property to satisfy compensatory mitigation requirements under any federal or state law, nor may any part of the Property be used or referenced so as to allow density credits to be allowed or added to any other property for purposes of development.

J. Utilities and Stream Crossings. Existing utilities and stream crossings may be maintained but shall not be expanded.

#### ARTICLE IV. ENFORCEMENT & REMEDIES

To accomplish the purposes of this Conservation Easement, Grantee is allowed to prevent any activity on or use of the Property that is inconsistent with the purposes of this Conservation Easement, and to require the restoration of such areas or features of the Property that have been damaged or altered by such activity or use. Upon any breach of the terms of this Conservation Easement, Grantee, by and through Fund or any other agency of the State, may seek the enforcement of the

Grantee's rights hereunder, including enforcement of the restrictions and prohibitions contained herein, in accordance with the following provisions.

A. Notice and Obligation to Cure; Injunctive Relief. Upon any determination that a violation of this Conservation Easement has occurred, is being maintained, or is threatened, Grantee, or any assign or successor of Grantee, shall have standing and may bring suit either individually or jointly to enforce compliance with the terms of this Conservation Easement and shall be entitled to obtain any relief available at law or in equity under the laws of this State, therein to enforce compliance with the terms of this Conservation Easement.

Unless an imminent or ongoing violation of this Conservation Easement would sooner substantially impair any Conservation Values of the Property, Grantee shall give the owner of the Property written notice of the violation and thirty (30) days to correct the violation and comply with the Conservation Easement, or to commence cure if such cure would take longer than thirty (30) days, before filing legal action.

In the event a Court of competent jurisdiction determines that Grantors, or any successor, grantee, assign or licensee have committed or permitted a violation of the Conservation Easement, Grantee shall be entitled to injunctive relief requiring cessation of the violation and cure of any damages to the Property, and to recover of those permitting or conducting activities in violation of this Conservation Easement any damages caused to Grantee, or to its interests in the Property, by such violation, including reasonable costs and attorneys fees in obtaining such relief.

No failure or delay by Grantee in seeking its lawful remedy for any breach of this Conservation Easement may be pled or asserted as a defense to any action by Grantee in seeking its lawful remedy for any subsequent violation of the Conservation Easement.

Grantee shall have the power and authority, consistent with statutory authority and its rights hereunder, (i) to prevent any impairment of the Property by acts which may be unlawful or in violation of this Conservation Easement; (ii) to otherwise preserve or protect its interest in the Property; and/or (iii) to seek damages from any appropriate person or entity. The rights and remedies of the Grantee provided hereunder shall be in addition to, and not in lieu of, all other rights and remedies available in connection with this Conservation Easement.

B. Violations by Third Parties. Nothing contained in this Conservation Easement shall be construed to entitle Grantee to bring any action against Grantor for any injury or change in the Property caused by third parties, resulting from causes beyond the Grantor's control, or from any prudent action taken in good faith by the Grantor under emergency conditions to prevent, abate, or mitigate significant injury to life, damage to property or harm to the Property.

C. Changed Conditions. The grant of this Conservation Easement gives rise to a property right immediately vested in the Grantee, with a fair market value equal to the proportionate value that the Conservation Easement bears to the value of the Property as a whole. That proportionate value of Grantee's property rights shall remain constant. If a change in conditions occurs, which makes impossible or impractical any continued protection of the Property for conservation purposes, the restrictions contained herein may only be extinguished by judicial proceeding. If this Conservation Easement is terminated and the Property, or a portion thereof, is sold, then as required by Section 1.170A-14(g)(6) of the IRS regulations, and amendments thereto, the Grantee, its successors and assigns, shall be entitled to a portion of the proceeds of any sale, exchange, involuntary conversion of the Property or damage award which is the result of such judicial proceeding. Upon such proceedings, such portion shall be equal to the proportionate value that Grantee's, its successors' and assigns' interest that the value in the Conservation Easement bears to the value of the Property as a whole as of the date of the recording of this Conservation Easement. "Proceeds of Sale" shall mean the cash

value of all money and property paid, transferred, or contributed in consideration for, or as otherwise required as a condition of sale, exchange or involuntary conversion of the Property, or any damages otherwise awarded as a result of judicial proceeding, minus the Grantor's expenses from such transaction or proceeding. Grantee, its successors and assigns, shall use its share of the proceeds of sale in a manner consistent with the Conservation Purposes set forth herein.

All termination related expenses incurred by the Grantors and the Grantee shall be paid out of any recovered proceeds prior to distribution of the net proceeds as described herein.

D. Condemnation. Whenever all or part of the Property is taken by exercise of eminent domain by public, corporate, or other authority, or by negotiated sale in lieu of condemnation, so as to abrogate the restrictions imposed by this Conservation Easement, the Grantor shall immediately give notice to the State, and the Fund, and shall take all appropriate actions at the time of such taking or sale to recover the full value of the taking, and all incidental or direct damages resulting from the taking, which any proceeds recovered in such actions shall be divided in accordance with the proportionate values of Grantor's and Grantee's interests as specified herein. If this Conservation Easement is terminated or modified and any or all of the Property is sold or taken for public use, then, as required by Section 1.170A-14(g)(6) of the IRS regulations, and amendments thereto, the Grantee, its successors and assigns shall be entitled to a portion of the proceeds of such sale, exchange or involuntary conversion of the Property, or any damage award with respect to any judicial proceeding. Such portion shall be equal to the proportionate value that Grantee's, successors' or assigns' interest in the Conservation Easement bears to the Property as a whole as of the date of recording of this Conservation Easement. "Proceeds of Sale" shall mean the cash value of all money and property paid, transferred, or contributed in consideration for, or as otherwise required as a condition of sale, exchange or involuntary conversion of the Property, or any damages otherwise awarded as a result of judicial proceeding, minus the Grantor's expenses from such transaction or proceeding. Grantee, its successors and assigns, shall use its share of the proceeds of sale in a manner consistent with the Conservation Purposes set forth herein.

All termination related expenses incurred by the Grantors and the Grantee shall be paid out of any recovered proceeds prior to distribution of the net proceeds as described herein.

E. Access for Inspection and Right of Entry. Grantee shall have the right, by and through their agents and employees, to enter the Property to inspect the same for compliance with this Conservation Easement.

F. Costs of Enforcement. In the event of violation of the terms and conditions of this Conservation Easement by Grantor, any costs incurred by Grantee, including reasonable attorneys fees, in enforcing this Conservation Easement against Grantor, and including any costs of restoration necessitated by Grantor's acts or omissions in violation of the terms of this Conservation Easement, shall be reimbursed by Grantor to Grantee.

G. No Waiver. Enforcement of this Conservation Easement shall be at the discretion of the Grantee, and any forbearance by Grantee to exercise its rights hereunder in the event of any breach of any term set forth herein shall not be deemed or construed to be a waiver by Grantee of such term or of any subsequent breach of the same or any other term of this Conservation Easement or of Grantee's rights. No delay or omission by Grantee in the exercise of any right or remedy shall impair such right or remedy or be construed as a waiver.

H. Indemnity. To the extent allowed by law, Grantor agrees to defend, protect, indemnify, and hold harmless the Grantee, its successors and assigns, from and against all claims, actions, liabilities, damages, fines, penalties, costs, and expenses resulting from (i) its intentional or negligent misrepresentation of the environmental condition of the Property; or (ii) any action or forbearance by the Grantor in the future which causes or contributes to the existence of any environmentally hazardous or illegal condition on the Property harmful to the environmental, conservation or water quality values of the Property.

#### ARTICLE V. DOCUMENTATION AND TITLE

A. Property Condition. The Parties acknowledge that the Property is currently undeveloped land.

B. Title. Grantor covenants and represents that Grantor is the sole owner and is seized of the Property in fee simple and has good right to grant and convey the aforesaid Conservation Easement; that there is legal access to the Property, that the Property is free and clear of any and all encumbrances, except for easements and exceptions to title and attached hereto as Exhibit "B" none of which would nullify, impair or limit in any way the terms or effect of this Conservation Easement, and Grantor covenants that the Grantee shall have the use of and enjoy all of the benefits derived from and arising out of the aforesaid Conservation Easement; provided, absent Grantor's consent, Grantee's right of access may not be assigned separately and shall only be exercised for the purposes provided herein.

#### ARTICLE VI. MISCELLANEOUS

A. Subsequent Transfers of Property by Grantor. Grantor agrees for itself, its successors and assigns, that at or before any transfer of any interest in the Property, Grantor shall notify Grantee, State and Fund, in writing of the name and address of any party to whom the Property, or any part thereof, is to be transferred. Grantors, for itself, its successors and

assigns, further agrees to make specific reference to this Conservation Easement in a separate paragraph of any subsequent lease, deed or other legal instrument by which any interest in the Property is conveyed, pointing out that any such conveyance is made subject to the terms and restrictions of this Conservation Easement, and continuing to provide for Grantee's right of entry and access to the Property.

B. Responsibilities of Grantor and Grantee Not Affected. Other than as specified herein, this Conservation Easement is not intended to impose any legal or other responsibility on the Grantee, or in any way to affect any existing obligation to the Grantor as owner of the Property. Among other things, this shall apply to: (i) The Grantor shall continue to be solely responsible for the upkeep and maintenance of the Property, to the extent it may be required by law. The Grantee shall have no obligation for the upkeep or maintenance of the Property.

C. Conservation Purposes for which Conservation Easement is Held. The Grantee, for itself, its successors and assigns, agrees that this Conservation Easement shall be held exclusively for the conservation purposes set out herein.

D. Qualification of Successor Grantees. The parties hereto recognize and agree that the benefits of this Conservation Easement are in gross and assignable, provided, however that the Grantee hereby covenants and agrees, that in the event of transfers or assignment of its interest in this Conservation Easement, the organization receiving the interest must be a qualified organization as that term is defined in Section 170(h)(3) of the Internal Revenue Code of 1986 (or any successor section) and the regulations promulgated there under, and must be one organized or operated primarily for one of the conservation purposes specified in Section 170(h)(4)(A) of the Internal Revenue Code and must be a qualified holder as that term is defined in the Act or any successor statute, and the Grantee further covenants and agrees that the terms of the transfer or assignment will be such that the transferee or assignee will be required to continue to carry out in perpetuity the conservation purposes that the contribution was originally intended to advance, set forth in the Recitals herein.

E. Stewardship. Pursuant to the terms of the Grant Agreement, and regardless of whether the Grantee under this Conservation Easement is the State acting by and through the Fund, Haywood County as steward of the Property, hereby covenants and agrees that, not less frequently than semi-annually, it will monitor and observe the Property, or provide for such monitoring and reporting by any grantee, successor in title or assign, in perpetuity with the State, to assure compliance with the purposes and provisions of this Conservation Easement and the provisions of the Grant Agreement, and that it will report, or provide for the reporting to the State and the Fund any observed and/or known violations of this Conservation Easement or Grant Agreement on the Property.

F. Construction of Terms. This Conservation Easement shall be construed to promote the purposes of the Act, which authorizes the creation of conservation easements for purposes including those set forth in the Recitals herein, and the conservation purposes of this Conservation Easement, including such purposes as are defined in Section 170(h)(4)(A) of the Internal Revenue Code.

G. Recording. Grantee shall record this instrument and any amendment thereto in a timely fashion in the official records of Haywood County, North Carolina, and may re-record it at any time as may be required to preserve its rights as required and approved by the State and the Fund.

H. Notices. Any notices required to be sent under this Conservation Easement shall be sent by certified mail, return receipt requested, addressed to the parties set forth, and addressed to the record owner of the Property, as shown in the Haywood County Tax Office, or as follows:

If to Grantor:  
Haywood County  
215 North Main Street  
Waynesville, NC 28786

If to Grantee/State:  
Clean Water Management  
1651 Mail Service Center  
Raleigh, NC  
Attention: Executive Director

In any case where the terms of this Conservation Easement require the consent of any party, such consent shall be requested by written notice, and shall be deemed to be denied unless within 90 days after mailing the receipt, written notice of such consent shall have been given the requesting party by the party of whom such consent was requested.

I. Amendments. No amendment to this Conservation Easement shall be effective unless executed by the owner of the Property and the Grantee, or their successors or assigns hereunder. No amendment will be allowed that is inconsistent with the purposes of this Conservation Easement or affects the perpetual duration of this Conservation Easement. No amendment executed by the parties as required above shall be effective until recorded in the Office of the Haywood County Register of Deeds.

J. Environmental Condition of Property. The Grantor warrants and represents to the State that to the best of its knowledge: (i) the Property described herein is now and at all times hereafter will continue to be maintained in full compliance with all federal, state and local environmental laws and regulations, and (ii) as of the date hereof there are no hazardous materials, substances, wastes, or environmentally regulated substances (including, without limitation, any materials containing asbestos, petroleum, or any toxic substance or ingredient) located on, in or under the Property or being used in connection therewith, and that there is no environmental condition existing on the Property that may prohibit or impede use of the Property for the purposes set forth in the Recitals.

K. Entire Agreement. This instrument sets forth the entire agreement of the Parties with respect to the Conservation Easement and supersedes all prior discussions, negotiations, understandings or agreements relating to the Conservation Easement. If any provision is found to be invalid, the remainder of the provisions of this Conservation Easement, and the application of such provision to persons or circumstances other than those as to which it is found to be invalid, shall not be affected thereby.

L. Interpretation. This Conservation Easement shall be construed and interpreted under the laws of the State of North Carolina, and any ambiguities herein shall be resolved so as to give maximum effect to the conservation purposes sought to be protected herein.

M. Parties. Every provision of this Conservation Easement that applies to the Grantors or Grantee shall likewise apply to their respective heirs, executors, administrators, assigns, and grantees, and all others of their successors in interest herein.

N. Merger. The parties agree that the terms of this Conservation Agreement shall survive any merger of the fee and easement interest in the Property.

O. Subsequent Liens on Property. No provisions of this Conservation Easement shall be construed as impairing the ability of Grantor to use the Property for collateral for borrowing purposes, provided that any mortgage or lien arising there from and recorded prior and subsequent to the recordation of this Conservation Easement shall be made subordinate to this Conservation Easement.

TO HAVE AND TO HOLD unto the Grantee, its successors, grantees, and assigns, forever. The covenants agreed to and the terms, conditions, restrictions and purposes imposed as aforesaid shall be binding upon Grantor, Grantor's representatives, heirs, successors, grantees, and assigns, and shall continue as a servitude running in perpetuity with the Property.

IN WITNESS WHEREOF, Grantor has hereunto set his/her hand and seal, or if corporate, has caused this instrument to be signed in its corporate name by it duly authorized officers by authority of its Board of Directors, the day and year first above written.

GRANTOR:

HAYWOOD COUNTY, a subdivision of the State of North Carolina

by: Mark Swargen

Chairman, Haywood County Board of Commissioners

ATTEST:

[Signature]

Clerk to the Board of County Commissioners

APPROVED AS TO FORM:

[Signature]

County Attorney

STATE OF NORTH CAROLINA  
COUNTY OF HAYWOOD

I, Deborah W. Caldwell, a Notary of said State and County, do hereby certify that Mark Swargen, personally appeared before me this day and acknowledged that he is Clerk of the Board of County Commissioners for Haywood County, a subdivision of the State of North Carolina, and that by authority duly given and as the act of the said Board, the foregoing instrument was voluntarily signed in its name by its Chairman, sealed with its corporate seal and attested by himself/herself as its Clerk.

WITNESS my hand and official seal, this 21 day of February, 2012.

Deborah W. Caldwell  
Notary Public

My Commission Expires: 9-26-2016

DEBORAH W. CALDWELL  
NOTARY PUBLIC  
HAYWOOD COUNTY, NC  
My Commission Expires 9-26-2016

Prepared by:  
Clarence H. Dickson, III

STATE OF NORTH CAROLINA  
COUNTY OF HAYWOOD

CWMTF No. 2006A-014

ASSIGNMENT OF CONSERVATION EASEMENTS

THIS ASSIGNMENT OF CONSERVATION EASEMENTS is made and entered into this 30 day of February, 2012, by and between HAYWOOD COUNTY, a subdivision of the State of North Carolina, ("Assignor") and STATE OF NORTH CAROLINA ("State" or Assignee"), by and through North Carolina Clean Water Management Trust Fund, an independent agency of the State with a mailing address of 1651 Mail Service Center, Raleigh, North Carolina 27699-1651 ("Fund");

RECITALS & CONSERVATION PURPOSES

A. Assignor is a county of the State of North Carolina. Assignee is a sovereign entity and is, therefore, authorized to accept, hold, and administer interests in land including conservation easements, and is a "qualified organization" and an "eligible donee" within the meaning of Section 170(h)(3) of the Internal Revenue Code and regulations promulgated there under, and is an eligible holder of conservation easements within the meaning of NCGS Chapter 121, Article 4, the "North Carolina Conservation and Historic Preservation Agreements Act".

B. The Fund, as a public agency of the State, is authorized by Article 18, Chapter 113A of the North Carolina General Statutes to finance projects and to acquire land and interests in land, including conservation easements for riparian buffers for purposes of providing environmental protection for surface waters and urban drinking water supplies, and establishing a network of riparian greenways for environmental, educational, and recreational uses.

C. Assignor acquired conservation easements by instruments recorded in the Haywood County Registry (the "Conservation Easements") as shown on Exhibit "A" attached hereto and incorporated herein by reference. The Conservation Easements restrict the use of the Property/Easement Areas as more particularly set forth therein.

D. Assignor has received a grant from Fund identified in Grant Agreement No. 2006A-014 ("Grant Agreement"), in consideration of its conveyance of this Assignment to Fund, and for thus restricting the uses of the Easement Areas. Grantor and Assignor have agreed that the Easement Areas shall be conserved and managed in a manner that will protect the quality of waters of the Pigeon River and streams tributary thereto, and otherwise promote the public purposes authorized by Article 18, Chapter 113A of the North Carolina General Statutes, and the parties hereto acknowledge that such restricted use is in accordance with, and furthers the purposes of, the Grant Agreement.

NOW, THEREFORE, for and in consideration of monies coming from the Fund, in fulfillment of terms of the Grant Agreement identified herein, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Assignor does hereby assign, transfer, set over, convey and deliver to State, and State, acting by and through the Fund, hereby accepts those of Assignor's rights, duties and interests in the Conservation Easements, together with the right to preserve and protect the conservation values of the Conservation Easements, the right to enforce the provisions of the Conservation Easements, and the right of ingress, egress and regress on the Property for the purposes granted herein.

PROVIDED, HOWEVER, Assignor hereby expressly reserves unto itself a nonexclusive right to monitor and observe the Conservation Easements including a right to ingress, egress, and regress on the Property, to exercise said non-exclusive monitoring rights, and further accepts unto itself the

obligation to report to the Fund any potential violations of the Conservation Easements that it observes.

IN WITNESS WHEREOF, Assignor and Assignee, by authority duly given, have hereunto caused these presents to be executed in such form as to be binding, to be effective upon the date of recordation in the public records of Haywood County, North Carolina.

ASSIGNOR: HAYWOOD COUNTY, a subdivision of  
the State of North Carolina

by: \_\_\_\_\_

*Mark Swanger*  
Chairman, Haywood County Board  
of Commissioners

ATTEST:

*[Signature]*  
Clerk to the County Board of Commissioners

APPROVED AS TO FORM:

*[Signature]*  
County Attorney

### **Appointment of Board of Equalization and Review Members**

Mr. Stamey indicated that the ballots were counted and the five individuals receiving the most votes were Randy Siske, Wade Francis, and Janis Pressley – with five (5) votes, Evelyn Cooper, and Mary Ann Enloe – with four (4) votes. Chairman Swanger asked if an alternate should be named to this board, members agreed.

Vice-Chairman Kirkpatrick motioned to appoint Mr. Siske, Mr. Francis, Ms. Pressley, Ms. Cooper and Ms. Enloe as regular members of the Board of Equalization and Review. Commissioner Upton seconded, the motion carried unanimously.

Mr. Stamey explained that both Troy Mann and Carroll Mease each received one (1) vote. Chairman Swanger asked if two alternates would be acceptable.

Commissioner Sorrells motioned that Mr. Mann and Mr. Mease be appointed as alternates to the Board of Equalization and Review. Vice-Chairman Kirkpatrick seconded, the motion carried unanimously.

### **CLOSED SESSION**

Commissioner Sorrells made a motion to enter into Closed Session for Attorney/Client Privilege as provided in G.S. §143-318.11(a)(3). Commissioner Upton seconded, and the motion carried unanimously.

The Board returned from closed session.

### **ADJOURNMENT**

Vice-Chairman Kirkpatrick made a motion to adjourn the regular Board meeting. Commissioner Ensley seconded, and the motion carried unanimously.

The time of adjournment was 6:50 p.m. The DVD is attached by reference to the minutes.

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CLERK

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CHAIRMAN