

Regular Session, June 21, 2010, 7:00 p.m.
Catawba County Board of Commissioners

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The Catawba County Board of Commissioners met in regular session on Monday, June 21, 2010 at 7:00 p.m. in the Robert E. Hibbitts Meeting Room of the 1924 Courthouse in Newton, North Carolina.

Present were Chair Katherine W. Barnes and Commissioners Dan A. Hunsucker, Glenn E. Barger and Barbara G. Beatty.

Vice-Chair Lynn M. Lail was absent. A quorum was present.

Also present were County Manager J. Thomas Lundy, Assistant County Manager Lee Worsley, Assistant County Manager Dewey Harris, County Attorney Debra Bechtel, Deputy County Attorney Anne Marie Pease and County Clerk Barbara Morris.

1. Chair Katherine W. Barnes called the meeting to order at 7:00 p.m.
2. Commissioner Glenn E. Barger led the Pledge of Allegiance to the Flag.
3. Chair Barnes offered the invocation.
4. Commissioner Barger made a motion to approve the minutes from the Budget Hearing with Departments on June 1, 2010, Budget Wrap-Up and Public Hearing on June 3, 2010 and the Regular Meeting and Budget Adoption on June 7, 2010. The motion carried unanimously.

At this time, Chair Barnes noted that Vice-Chair Lynn M. Lail was out of town and unable to attend the meeting.

5. Recognition of Special Guests: Chair Barnes welcomed all present, the Newton-Conover Tennis Team and Commissioner Candidate Randy Isenhour and indicated that she was also a candidate in the upcoming election.
6. Public Comments for Items not on the Agenda: None.
7. Presentations:
All the Commissioners came forward to present the Newton-Conover High School Tennis Team with a Certificate of Commendation to recognize its outstanding performance in earning the title of 2A State Men's Champions for 2010. Coach Brian Tate and members of the Red Devil team were applauded for the spirit, motivation and teamwork that brought this impressive title to Newton-Conover High School. Chair Barnes noted that she had attended the Champions of Education Breakfast and School Superintendent Barry Redmond had talked of the strength of the Newton-Conover athletic program.
8. Appointments.
Commissioner Dan Hunsucker recommended the appointment of Mr. Jerry McCombs for a first term on the Newton-Conover Auditorium Authority. This appointment is for an initial term of one year, expiring June 30, 2011. This recommendation came in the form of a motion. The motion carried unanimously.
9. Consent Agenda:
County Manager J. Thomas Lundy presented the following three items on the consent agenda and which came to the Board with the recommendation of approval from the Board's Policy and Public Works Subcommittee acting for the Finance and Personnel Subcommittee:
 - a. A request for the Board to adopt a resolution authorizing the negotiation of one or more installment financing contracts associated with the construction of Newton-Conover Middle School, renovations at Arndt Middle School and Hickory High School, and renovations at Catawba Valley Community College (CVCC), up to the amount of \$32 million. Earlier this year, the Board approved a \$1.9 million renovation project for Hickory High; a \$5.2 million expansion of Arndt Middle and \$20.8 million for a new Newton-Conover Middle School. All three projects have been bid and started, though the addition of a new gym at Arndt Middle School will be bid on July 8. In the current four-year construction cycle, the County planned for \$3.3 million in renovations at CVCC consisting of upgrades at the East Campus, roofing projects at several buildings on campus, and the installation of an elevator at the Simulated Hospital. Bids on these projects are expected over the next few weeks.

Catawba County received an allocation of \$11.5 million in Qualified School Construction Bonds (QSCBs), which were made available through the American Recovery and Reinvestment Act of 2009. Of this amount, \$5.2 million is pledged towards the Arndt Middle School project and the balance will be used for the new Newton-Conover Middle School.

These bonds were intended to offer an interest-free option to local governments for the financing of school construction projects. However, earlier transactions involving QSCBs in other counties across North Carolina have been financed at a 2% rate. Fortunately, the U.S. Congress passed legislation earlier this year that offers a rebate to local governments for the interest paid on the bonds, effectively giving local governments a 0% rate depending on the term of the bonds.

The County will attempt to issue the QSCBs at a 0% rate, and finance the balance of the four projects under traditional means, at an expected interest rate of 4.0-4.5%. This type of financing consists of pledging the asset acquired or constructed as collateral for the loan in case of default. Since the County does not own the land on which the middle school will be built, the Newton-Conover Board of Education must convey the land to the County in order for the County to borrow the funds for the new school. The County will then lease the new school and land to the Board of Education for its use, and at the end of the financing term, transfer all rights to the property back to the school system. The same arrangement may be required for the Arndt Middle School project.

All local governments in North Carolina that borrow funds greater than \$500,000 or with more than five years to maturity must receive approval by the Local Government Commission (LGC), a division of the N.C. Department of State Treasurer. It is anticipated that the LGC will consider this project at its August 3rd meeting in Raleigh.

The following resolution applies:

RESOLUTION OF THE BOARD OF COMMISSIONERS OF THE COUNTY OF CATAWBA, NORTH CAROLINA, AUTHORIZING THE NEGOTIATION OF ONE OR MORE INSTALLMENT FINANCING CONTRACTS AND PROVIDING FOR CERTAIN OTHER RELATED MATTERS THERETO

WHEREAS, the County of Catawba, North Carolina (the "*County*") is a validly existing political subdivision of the State of North Carolina, existing as such under and by virtue of the Constitution, statutes and laws of the State of North Carolina (the "*State*");

WHEREAS, the County has the power, pursuant to the General Statutes of North Carolina to (1) purchase real and personal property, (2) enter into installment purchase contracts in order to finance the purchase of real and personal property used, or to be used, for public purposes, and (3) grant a security interest in some or all of the property purchased to secure repayment of the purchase price;

WHEREAS, the Board hereby determines that it is in the best interest of the County to enter into (a) one or more installment financing contracts (collectively, whether one or more, the "*Contract*") under Section 160A-20 (the "*Act*") of the General Statutes of North Carolina in order to pay the capital costs of (1) acquiring, constructing, improving, expanding and equipping various public school facilities in the County, including, without limitation, construction of a new Newton-Conover Middle School ("*N-C Middle*") and renovations and additions to Harry M. Arndt Middle School ("*Arndt Middle*") and Hickory High School ("*Hickory High*"), and (2) renovating and improving facilities located at Catawba Valley Community College (collectively, the "*Projects*") and (b) one or more deeds of trust and security agreements (collectively, whether one or more, the "*Deed of Trust*") related to the County's fee simple interest in the real property on which one or more of the Projects is or will be located (collectively, the "*Sites*") to provide security for the County's obligations under the Contract;

WHEREAS, in connection with the financing of the Projects and the granting of the Deed of Trust, it may be necessary for the County to acquire one or more of the Sites from the School Unit (as defined below) that owns each such Site;

WHEREAS, N-C Middle will be operated by the Board of Education of the Newton-Conover City Administrative School Unit (the "*Newton-Conover Board*"), Arndt Middle will be operated by the Board of Education of the County (the "*County Board of Education*"), Hickory High will be operated by the Board of Education of Hickory Public Schools (the "*Hickory Board*"), and CVCC will be operated by the Board of Trustees for CVCC (the "*CVCC Board*," and together with the Newton-Conover Board, the County Board of Education and the Hickory Board, the "*School Units*");

WHEREAS, the County hereby determines that the acquisition of the Projects is essential to the County's proper, efficient and economic operation and to the general health and welfare of its inhabitants; that the Projects will provide an essential use and will permit the County to carry out public functions that it is authorized by law to perform; and that entering into the Contract and Deed of Trust is necessary and expedient for the County by virtue of the findings presented herein;

WHEREAS, the County hereby determines that the Contract allows the County to purchase the Projects and take title thereto at a favorable interest rate currently available in the financial marketplace and upon terms advantageous to the County;

WHEREAS, the County hereby determines that the estimated cost of financing the acquisition of the Projects is an amount not to exceed \$32,000,000 and that such cost of the acquisition of the Projects exceeds the amount that can be prudently raised from currently available appropriations, unappropriated fund balances and non-voted bonds that could be issued by the County in the current fiscal year pursuant to Article V, Section 4 of the Constitution of the State;

WHEREAS, although the cost of financing the acquisition of the Projects pursuant to the Contract is expected to exceed the cost of financing the acquisition of the Projects pursuant to a bond financing for the same undertaking, the County hereby determines that the cost of financing the Projects pursuant to the Contract and Deed of Trust and the obligations of the County thereunder are preferable to a general obligation bond financing or revenue bond financing for several reasons, including but not limited to the following: (1) the cost of a special election necessary to approve a general obligation bond financing, as required by the laws of the State, would result in the expenditure of significant funds; (2) the time required for a general obligation bond election would cause an unnecessary delay which would thereby decrease the financial benefits of acquiring the

Projects; and (3) no revenues are produced by the Projects so as to permit a revenue bond financing;

WHEREAS, the County has determined and hereby determines that the estimated cost of financing the Projects pursuant to the Contract reasonably compares with an estimate of similar costs under a bond financing for the same undertaking as a result of the findings delineated in the above preambles;

WHEREAS, the County does not anticipate a future property tax increase solely to pay installment payments falling due under the Contract;

WHEREAS, Parker Poe Adams & Bernstein LLP, as special counsel ("*Special Counsel*"), will render an opinion to the effect that entering into the Contract and the transactions contemplated thereby are authorized by law;

WHEREAS, no deficiency judgment may be rendered against the County in any action for its breach of the Contract, and the taxing power of the County is not and may not be pledged in any way directly or indirectly or contingently to secure any moneys due under the Contract;

WHEREAS, the County is not in default under any of its debt service obligations;

WHEREAS, the County's budget process and Annual Budget Ordinance are in compliance with the Local Government Budget and Fiscal Control Act, and external auditors have determined that the County has conformed with generally accepted accounting principles as applied to governmental units in preparing its Annual Budget ordinance;

WHEREAS, past audit reports of the County indicate that its debt management and contract obligation payment policies have been carried out in strict compliance with the law, and the County has not been censured by the North Carolina Local Government Commission (the "*LGC*"), external auditors or any other regulatory agencies in connection with such debt management and contract obligation payment policies;

WHEREAS, a public hearing on the Contract will be properly noticed and held on July 12, 2010;

WHEREAS, approval of the LGC with respect to entering the Contract must be received; and

WHEREAS, the County hereby determines that all findings, conclusions and determinations of the County in this Resolution are subject to modification or affirmation after all interested parties have

been afforded the opportunity to present their comments at a public hearing regarding the execution and delivery of the Contract, the Deed of Trust and the Projects to be financed thereby.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COMMISSIONERS OF THE COUNTY OF CATAWBA, NORTH CAROLINA, AS FOLLOWS:

Section 1. ***Authorization to Negotiate the Contract.*** The County Manager and the Finance Director, with advice from the County Attorney and Special Counsel, are hereby authorized and directed to negotiate on behalf of the County for the financing of the Projects for a principal amount not to exceed \$32,000,000 under the Contract to be entered into in accordance with the provisions of the Act and to provide in connection with the Contract, as security for the County's obligations thereunder, the Deed of Trust conveying a lien and interest in one or more of the Sites, including the improvements thereon, as may be required by the entity or entities, or their respective assigns, providing the funds to the County under the Contract.

Section 2. ***Application to LGC.*** The Finance Director or his designee is hereby directed to file with the LGC an application for its approval of the Contract and all relevant transactions contemplated thereby on a form prescribed by the LGC and to state in such application such facts and to attach thereto such exhibits regarding the County and its financial condition as may be required by the LGC.

Section 3. ***Authorization to Negotiate, Execute and Deliver Agreements Relating to Projects and Sites.*** The County Manager and the Finance Director, with advice from the County Attorney and Special Counsel, are hereby authorized and directed to negotiate with each of the School Units (1) the conveyance to the County, if necessary, of the Sites to be encumbered by the lien of the Deed of Trust and (2) such construction and acquisition agreements and lease agreements as may be required by the entity or entities, or their respective assigns, providing the funds to the County under the Contract to finance the Projects (collectively, the "*Agreements*"). The Chairman, the Clerk to the Board, the County Manager, the Finance Director and their respective designees are each hereby authorized, empowered and directed to execute and deliver such Agreements, including necessary counterparts, in substantially the same form and content as similar agreements previously executed and delivered by the County in similar financings, but with such changes, modifications, additions or deletions as they may deem necessary, desirable or

appropriate. The execution of each Agreement by the Chairman, the Clerk to the Board, the County Manager, the Finance Director or their respective designees shall constitute conclusive evidence of the County's approval of any and all such deviations in such Agreement from the form and content of similar agreements previously executed and delivered by the County, and from and after the execution and delivery of each Agreement, the Chairman, the Clerk to the Board, the County Manager and the Finance Director of the County are hereby authorized, empowered and directed to do all such acts and things and to execute all such documents as may be necessary to carry out and comply with the provisions of such Agreement as executed.

Section 4. **Direction to Retain Special Counsel.** The County Manager and the Finance Director, with advice from the County Attorney, are hereby authorized and directed to retain the assistance of Parker Poe Adams & Bernstein LLP, as special counsel.

Section 5. **Repealer.** All motions, orders, resolutions and parts thereof in conflict herewith are hereby repealed.

Section 6. **Effective Date.** This Resolution is effective on the date of its adoption.

b. A request for the Board to adopt a resolution giving authority to the County Finance Director to declare the official intent on behalf of the County to reimburse any and all expenditures with the proceeds of debt under United States Department of Treasury regulations. On May 25, 2004, the Board designated the Finance Director as the County official responsible for declaring the official intent of the County to reimburse itself for expenditures incurred in conjunction with a capital project from the proceeds of future *tax-exempt* debt. With the adoption of the American Recovery and Reinvestment Act of 2009, new types of *taxable* debt vehicles were made available to the County, which require additional authority by the Board to allow the County to reimburse itself for expenditures from the proceeds of the new types of taxable debt. The authority granted will insure adherence to U.S. Government regulations and afford the County some flexibility in issuing debt at the most cost effective time.

The following resolution applies:

RESOLUTION DECLARING THE OFFICIAL INTENT OF THE COUNTY TO REIMBURSE EXPENDITURES UNDER THE INTERNAL REVENUE CODE OF 1986 AND UNITED STATES DEPARTMENT OF TREASURY REGULATIONS

BE IT RESOLVED that the Board of Commissioners (the "Board") for the County of Catawba (the "County") as follows:

1. It is hereby found, determined and declared by the Board as follows:

(a) The Board has previously granted the Finance Director of the County in a resolution adopted May 25, 2004 the authority to designate the Board's official intent on behalf of the County to reimburse itself for expenditures from the proceeds of tax-exempt debt; however, the American

Recovery and Reinvestment Act of 2009 now provides the County with new types of taxable debt vehicles that have similar rules that require the Board to grant the authority to the Finance Director to designate the Board's official intent on behalf of the County to reimburse itself for expenditures from the proceeds of the new types of taxable debt.

(b) Section 54A(d)(2)(D) of the Internal Revenue Code of 1986 (the "Code") and Section 1.150-2 of the Treasury Regulations (the "Regulations") prescribe specific procedures which will be applicable to certain bonds or notes issued by the County including, without limitation, a requirement that the County declare its official intent to reimburse certain expenditures with proceeds of debt to be incurred by the County prior to (in the case of certain "qualified tax credit bonds"), or within sixty (60) days of (in the case of tax-exempt obligations), payment of the expenditures to be reimbursed.

(c) The Code and the Regulations expressly permit the statement of official intent to be declared by any person designated by the County to declare such official intent on behalf of the County.

(d) The Board believes that it is in the best interest of the County to designate the Finance Director of the County to declare such official intents on behalf of the County.

Section 2. As permitted by the Code and the Regulations, the Finance Director of the County, now or hereafter serving in such capacity, is hereby designated by the Board to declare the official intent on behalf of the County to reimburse any and all expenditures with the proceeds of debt to be hereafter incurred by the County.

Section 3. This resolution shall take effect upon its passage.

c. A request for the Board to award a bid for feedstock processing equipment to A.R. McKay Processing Machinery, Inc, of Hickory, N.C. in the amount of \$159,642, and the appropriation of \$9,642 from the Solidwaste Management Fund.

A Feedstock Processing Facility will be a part of the Biodiesel Research and Production Facility under construction at the County's EcoComplex. When feedstock crops such as sunflower and canola are harvested, the seeds must be cleaned and pressed to extract oil before it can be sent to the Biodiesel Facility for conversion into biodiesel fuel. In 2009, the County was awarded a Biofuels Development Grant from the Biofuels Center of North Carolina in the amount of \$150,000. This money may be used only for the purchase of equipment used to process feedstock crops before they are used to make biodiesel.

Bids were received on June 7, 2010 for six individual pieces of feedstock processing equipment: Premier Grain Cleaner Company Indented Cylinder Separator Model PVSC-12 PF; A.T. Ferrell Vibratory Conveyor - 20.3 feet; A.T. Ferrell Vibratory Conveyor - 48.3 feet; A.T. Ferrell Clipper Conquest 586 Air Screen Cleaner; Universal Model C3-500 Bucket Elevator and GSI Model 1108 Grain Dryer. The project was advertised on the County's web site and the State of North Carolina's Interactive Purchasing System, and notices were sent to several vendors.

On June 7, 2010, one bid was received for the specified equipment from A.R. McKay Processing Machinery, Inc., of Hickory, North Carolina for \$159,642. A.R. McKay is obtaining the equipment from various manufacturers. Some of those manufacturers can only guarantee their price if the bids are awarded within thirty days, due to fluctuating steel prices. An additional \$9,642 not included in the grant will be appropriated from the Solid Waste Management Fund.

The following appropriations apply:

APPROPRIATIONS

Revenue

525-350050-690100 \$9,642

Fund Balance Applied

Expenditures

525-350150-989000 \$9,642

Other Structures & Improvements

Chair Barnes asked if any Board member wished an item to be broken out from the consent agenda and none were requested. Commissioner Barger made a motion to approve the consent agenda and specifically adopt the resolutions which are part of items a and b above. The motion carried unanimously.

10. Departmental Reports.

A. Planning, Parks and Development:

Jacky Eubanks, Planning, Parks and Development Director, came forward and presented a request for the Board to approve a reciprocal easement agreement between Long Communications, LLC and the County regarding the Baker's Mountain Park property. In 1988 the County obtained land on Bakers Mountain from Long Communications, which the County opened as a passive park in 1999. The park borders a 17.41-acre tract retained by Long Communications that is used for several communications towers. The communications site has access through the park property along a graveled road. Recently, Mr. Tom Long, Jr., Director of Engineering for Long Communications, re-aligned the road to allow for better access to several agencies having facilities on the Long property including N.C. Highway Patrol, U.N.C. Public Television, N.C. Department of Transportation, and Catawba County Emergency Services. Mr. Long is preparing to construct another tower in the near future. It is important for security purposes that Mr. Long limits access to the property. One security measure would require that the County permit him to place a fence and gate along the park property adjacent to the new Advent Crossroads water tower. He would also like to connect to public water and bring an electric line to the water tower that will allow the water tower, which runs on solar power, to have a secondary power supply. Baker's Mountain Park would benefit from the proposed agreement because the park would gain a permanent access easement that would perpetually allow the County to continue to use a portion of trail that currently extends onto the Long property. The easement agreement will also provide permanent access across the Long property for County Parks and Emergency Services personnel to provide service to the park observation deck and surrounding areas within the park. In return for the electric line extension to the water tower and the permanent easements, the County agreed to waive the water tap fee and associated capital fees for the existing water line. Commissioner Barbara G. Beatty made a motion to approve this reciprocal agreement. The motion carried unanimously. The following agreement applies:

RECIPROCAL EASEMENT AGREEMENT

THIS RECIPROCAL EASEMENT AGREEMENT is made and entered into this 21st day of June, 2010 by and between **CATAWBA COUNTY**, a body politic, corporate in nature, or governmental agency existing by virtue of the laws of the State of North Carolina, having a mailing address of Post Office Box 389, Newton, North Carolina 28658, hereinafter referred to as "County" and the **LONG COMMUNICATIONS, LLC**, a North Carolina limited liability company having a mailing

address of Post Office Box 1059, Hickory, North Carolina 28603, hereinafter referred to as "LLC", and;

WITNESSETH:

WHEREAS, LLC owns a tract of real property located at the peak of Bakers Mountain, Catawba County, North Carolina, and more particularly described on Exhibit A hereto (the "Long Property"); and

WHEREAS, County owns a tract of real property (the "Park Property") on Baker's Mountain is adjacent to the north, south and west boundaries of the Long Property, and more particularly described in Deed Book 1568 Page 890, Catawba County Register of Deeds, and generally known as Baker's Mountain Park; and

WHEREAS, LLC desires to make improvements to the Long Property and has requested that the County grant it certain easements over and across the Park Property in connection with those improvements; and

WHEREAS, County has requested that LLC grant to County easements over the Long Property to provide access and utility service; and

WHEREAS, County and LLC have agreed to grant the easements on the terms and conditions hereinafter set forth.

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

1. **Easement Granted by County:** County does hereby grant, bargain, sell, and convey unto LLC, its successors and assigns, a non-exclusive and perpetual right and easement to install, construct and maintain a gate and fence and to install, construct and maintain a water line, over, under through, across, along and upon a portion of the Park Property, for the benefit of and as an appurtenance to the Long Property, and more particularly described as follows:

An easement fifty feet (50') in width as shown on Exhibit A number 7, encompassing the existing Baker's Mountain Road Extension from the existing water storage tank to the western boundary of the Long Property for purposes of maintaining a road and an additional easement twenty-five feet (25') in width on each side of the roadway easement as shown on Exhibit A number 8, for purposes of maintaining vegetation in such a way as to prevent interference with ingress and egress on the roadway, for access to utility easements and maintenance of the fence spurs as shown on Exhibit A, number 2, incorporated herein by reference.

2. **Covenants of LLC with Respect to Fence and Water Line Easement:** LLC covenants and agrees that the improvements to be installed, used and maintained within the Fence and Water Line Easement shall meet the following requirements and be operated and maintained so that they continue to meet the following requirements so long as the easement exists:
 - a. The gate and fencing, depicted in Exhibit A, numbers 1 and 2, shall be tied in to the County's existing fence at the water storage tank on Baker's Mountain Road Extension. County shall be furnished with keys or other access to open the gate and County shall have access at all times to the gate and the easement area.
 - b. LLC will install and maintain perpendicular fence segments or spurs along the fence of sufficient width and at strategic placement designed to prevent or deter passage by all terrain vehicles depicted in Exhibit A, number 2. LLC shall have the right to access and maintain the fence spurs.

- c. The water line will be located north of and parallel to the existing electric service line, and south of the travelled portion of the access easement, as generally shown on Exhibit A, number 4 and will not exceed two inches (2") in diameter.
 - d. LLC agrees, at its sole cost, to install an underground electrical service line within the existing conduit pipe leading from its communication facility site on the Long Property, within the Fence and Water Line Easement to the water storage tank facility on the Park Property, to provide a secondary electrical power source, to the water storage tank, as depicted in Exhibit A, number 3.
3. **Easements Granted by LLC:** LLC does hereby grant, bargain, sell, and convey unto County, its successors and assigns, the following non-exclusive and perpetual rights and easements over, under through, across, along and upon a portion of the Long Property, for the benefit of and as an appurtenance to, the Park Property, and more particularly described as follows:
- a. An access easement fifty (50) feet in width leading from the western boundary of the Long Property where the existing Baker's Mountain Road Extension enters the Long Property (twenty-five feet from the center of the existing road), following the existing road in a generally eastern direction, and then continuing in a general northerly direction to the northeastern section of the property to the transmission line easement then northward following the transmission line easement to where the Long property abuts Bakers Mountain Park property as depicted in Exhibit A, number 7, of the Long Property. The exact location of the access easement beyond the existing road has not been determined. When the road is constructed, the easement shall be fixed and shall be twenty-five (25) feet from the center of the road as constructed (hereinafter "County Access Easement"). The County Access Easement shall be for the purpose of constructing, using and maintaining an access road to the northeastern portion of the Park Property, for the purposes of maintaining that area of the park and for emergency vehicles.
 - b. An easement for the installation and maintenance of an underground electric utility line twenty-five (25) feet in width, located within the County Access Easement.
 - c. An easement twenty-five (25) feet in width on the south side of the existing hiking trail and to the north side of the existing hiking trail the easement shall extend to the County property line, for the use and maintenance of the hiking trail currently in existence near the northwestern boundary of the Long Property as depicted in Exhibit A, number 6, (the "Hiking Trail Easement"). LLC acknowledges that the hiking trail is open to and is used by the general public to access the northeastern section of the Park Property.
4. **Other Obligations of LLC:** LLC covenants and agrees that it will grade, gravel and complete an access road of at least ten feet (10') in width within the County Access Easement, as depicted in Exhibit A, number 5, within sixty (60) days of the issuance of a certificate of compliance from the County zoning department and will thereafter maintain the access road in good and passable condition.
5. **Other Obligations of County:** County covenants and agrees that it will maintain the Hiking Trail Easement as part of the Bakers Mountain Park trail system. County further agrees to waive County's portion of the water tap fee for the installation of the water line, and associated capital fee.
6. **Notices:** Any notice sent pursuant to this Agreement should be sent via first class mail with appropriate postage attached to the following:

County: J. Thomas Lundy
 Catawba County Manager
 Post Office Box 389
 Newton, NC 28658

LLC: Long Communications, LLC
 Post Office Box 1059
 Hickory, NC 28603

7. **Indemnification by LLC:** LLC agrees to indemnify and hold County harmless from and against any claims, actions, damages, liability and expense in connection with loss of life, bodily injury, personal injury, and damage to property occurring on, in, or about, or arising out of the use of the easements granted to it herein, wholly or in part by any act or omission of LLC, its employees, guests or agents.
8. **Indemnification by County:** County agrees to indemnify and hold LLC harmless from and against any claims, actions, damages, liability and expense in connection with loss of life, bodily injury, personal injury, and damage to property occurring on, in, or about, or arising out of the use of easements granted to it herein, wholly or in part by any act or omission of County, its employees, guests or agents.
9. **Appurtenance; Binding Effect.** The terms of this agreement, both the benefits and the burdens, shall run with the land and shall be binding on the County and the LLC and their respective successors and assigns.
10. **Execution in Counterparts.** This Agreement may be executed in any number of counterparts, each of which when so executed and delivered shall be deemed an original.
11. **Governing Law.** This Agreement is governed by and shall be construed in accordance with the laws of the State of North Carolina.

IN WITNESS WHEREOF, the parties hereunto set their hands on the day and year above first written.

Catawba County, a North Carolina body politic

By: _____
 Katherine W. Barnes, Chair
 Catawba County Board of Commissioners

LONG COMMUNICATIONS, LLC

By: _____
 Title: _____

THIS INSTRUMENT has been pre-audited in the manner required by the Local Government Budget and Fiscal Control Act as amended.

- B. Utilities and Engineering:
1. Utilities and Engineering Director Barry Edwards presented a request for the Board to approve an interlocal agreement between Catawba County and the City of Hickory for a waterline extension in accordance with the County Code, Chapter 42, Revenue Sharing Program, for Heatherbrook Subdivision. On August 6, 2002, the County received a petition requesting municipal water service for the Heatherbrook Subdivision, located off Highway 10 West in southwestern Catawba County, signed by 15 property owners who are experiencing dry wells and poor water quality and quantity. 44 potential customers/properties could be served by this project, with 31 of these including residential structures. The payback period for the project is estimated to be approximately 25 years.

The Heatherbrook Subdivision Water Project consists of approximately 6,145 linear feet of water lines complete with valves, hydrants and related appurtenances, extending from an existing City of Hickory water line on Highway 10 along Heatherbrook Trail and Keeneland Trail. The project was approved in the County's Fiscal Year 2009/10 budget, with an estimated cost of \$325,000. On March 26, 2010, responses to a Request for Qualifications (RFQ) were received from seventeen engineering firms. A selection committee consisting of Jack Chandler, Assistant Director of Utilities and Engineering, Debbie Anderson, Purchasing Agent, Jonathan Greer, Project Manager, and Kevin Greer, the City of Hickory's Assistant Director of Public Utilities, reviewed the RFQs and selected Clark & Associates, Inc. of Hickory, NC, based upon that firm's qualifications. The contract for engineering services was awarded to Clark & Associates. Staff was able to award the contract since the engineering costs totaled \$27,600, under a \$50,000 threshold at which contracts must be awarded by the Board.

Before proceeding with the construction of this project, half of the 31 residential property owners in the subdivision, a total of 15 property owners, will be required to pay the County's Water Capital Fee at a 50% discount. The discounted amount will be \$500 per connection. Staff will inform the property owners of this requirement by letter, allowing them 30 days to commit to a water connection and pay the discounted Water Capital Fee. This project is being developed in cooperation with the City of Hickory under County Code Chapter 42, Revenue Sharing Program. An applicable interlocal agreement was approved by the Hickory City Council on May 18, 2010. Commissioner Barger made a motion to approve entering into this interlocal agreement. The motion carried unanimously. The following agreement applies:

STATE OF NORTH CAROLINA
CATAWBA COUNTY

AGREEMENT BETWEEN CATAWBA
COUNTY AND THE CITY OF HICKORY
FOR REVENUE SHARING - HEATHERBROOK
SUBDIVISION WATER PROJECT

THIS AGREEMENT made and entered into this _____ day of _____, 2010, by and between **CATAWBA COUNTY**, (hereinafter "County"), a body politic corporate in nature, and the **CITY OF HICKORY**, (hereinafter "City"), a North Carolina municipal corporation.

WITNESSETH:

WHEREAS, the County has adopted into its Catawba County Code, Chapter 42, entitled "WATER AND SEWER", including specifically Article IV, Division II, the "REVENUE SHARING PROGRAM", and the City has agreed to enter into a Revenue Sharing Agreement with County for the purpose of funding a waterline extension to serve the Heatherbrook Subdivision and Heatherbrook Phase III Subdivision, (hereinafter "Project"); and

WHEREAS, County and City agree to cooperate on the Project in order to provide extensions and connections to an area previously unserved by a municipal water system; and

WHEREAS, County and City agree to share the responsibility of locating, funding, and maintaining the lines and connections in order to provide a safe and reliable source of water.

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

County and City agree that those portions of Chapter 42, of the Catawba County Code pertaining to Revenue Sharing shall be and are incorporated by reference into this Agreement. In addition to the requirements and conditions provided in Chapter 42, County and City agree to the following additional terms and conditions:

1. Project shall consist of approximately 6,145 linear feet of water lines complete with valves, hydrants, and related appurtenances, extending from an existing water line on West NC 10 Highway in the Bandys Township area of southwestern Catawba County.
2. City and County agree the approximate cost of the Project including design, legal fees, rights-of-way, permitting fees and line placement is Three Hundred Twenty Five Thousand dollars (\$325,000). County and City further agree County will pay the full amount of the project with payment being made directly from County to the Contractor. County and City further agree both parties will be notified of proposed change orders and action concerning those change orders and will consult on a reasonable basis before approving said change orders. In the event of increased change orders approved by County and City, these costs shall be included as the total construction cost of the Project.
3. County shall have the right, at its option, to construct and install future line additions, extensions or connections from any water line(s) installed and operated as part of the Project, provided any such addition, extension or connection will serve County customers and not customers inside City's corporate limits and adequate capacity is available. If some portion of such addition, extension or connection is within the City's corporate limits, City shall have the right to add to, connect to or extend the line to its citizens with no participation from County.
4. County agrees not to serve Wholesale / Bulk Water Customers for resale of water without written permission from City.
5. If City, upon its own initiative, proposes to County to make an addition, extension or connection to Project lines, County shall within ninety (90) days notify City of its intention to participate in the addition, extension or connection. If County opts to participate in the addition, extension or connection, the operation and maintenance of the line, along with the disbursement of revenue, will be governed by this Agreement.
6. If County opts not to participate in any addition, extension or connection, City retains the right to proceed without any participation from County.
7. City will operate and maintain Project lines and connections as required by Chapter 42. The connection fee for tap stub outs installed with the initial construction of the Project shall be those in effect for the City at that time. Connection fees for connections made after initial construction of the Project shall be those in effect for the City as amended from time to time by the City Council.
8. The County Capital fee for connection tap stub outs installed with the initial construction of the Project shall be those in effect for the County at that time. County Capital fees for connections made after initial construction of the Project shall be those in effect for the County as adopted from time to time by the County.
9. County shall design and develop the Project, and shall secure all necessary rights-of-way, permits and permission from all persons, firms, corporations and other owners for construction of the Project. Further, County shall assume responsibility for the completion of the Project. The Application for Approval of Engineering Plans and Specifications for Water Supply Systems, to be submitted to the Public Water Supply Section of NCDENR, shall be in the name of City. Any NCDOT encroachments required to complete the Project shall be in the name of the City.
10. City shall participate in selection of Engineer to provide design and shall be continuously engaged in the Design Process.
11. All specifications for materials and installation of all lines and systems in the Project shall be in accordance with City's standard specifications for water line installations. All designs, developments, plans, engineering and construction shall be subject to review and consent by both

parties. The parties will not suggest or make unreasonable changes in the designs, developments, and plans for the Project.

12. County agrees that all customers of this System shall be subject to policies, practices, ordinances and directives of the City in operation of the System. This includes but is not limited to: Water Conservation Ordinances, Rate Reviews, Irrigation Meter Policy, Backflow Prevention Policy, etc.

13. City will maintain and repair all water lines and appurtenances which are part of the Project as a part of the overall City water system. City shall respond with reasonable promptness and efficiency to any and all complaints with respect to the Project and will provide necessary services related to such complaints. In accordance with Standard Operating Procedures the foregoing notwithstanding, nothing contained herein shall be deemed to give any third party any rights arising under this Agreement.

14. City will pay to County, on a quarterly basis, one-half the monthly revenue from water availability, customer service, and water consumption charges generated by the Project's water lines. The first payment shall be due one year from the date of the execution of this Agreement.

15. City may be reimbursed for one-half the flow of any water flushed from the System as the result of water quality testing necessary.

16. Revenue sharing will continue for forty (40) years on the lines that remain outside the city's corporate area. If City annexes some portion of the area served by Project water lines, the City may purchase the lines, in accordance with Chapter 42 of the Catawba County Code, at the time of such annexation at a purchase price based on the percentage of County funding of the annexed portion of the Project and upon the following depreciation schedule: (a) for the initial seven (7) year period following installation of the lines, no (0) depreciation shall occur; (b) for the next thirty-two (32) year period, the lines shall depreciate at the rate of three percent (3%) per year; and (c) for the final one (1) year period, the lines shall depreciate at the rate of four percent (4%).

17. At the end of the forty (40) year term after the execution of this Agreement, for any lines that have not yet been annexed by City, the parties shall enter into good faith negotiations to reach an agreement for an additional forty (40) year period to begin at the end of the forty (40) year term of this initial Agreement.

IN WITNESS WHEREOF, both parties have hereunto set their hands on the day and year above first written.

CATAWBA COUNTY BOARD OF COMMISSIONERS

By: _____
Katherine W. Barnes, Chair

ATTEST:

Barbara Morris, Clerk

CITY OF HICKORY

By: _____
Rudy Wright, Mayor

ATTEST:

Pamela S. Tallent, City Clerk

2. Utilities and Engineering Director Barry Edwards presented a request for the Board to approve an interlocal agreement between Catawba County and the City of Hickory for a waterline extension in accordance with the County Code, Chapter 42, Revenue Sharing Program, for the Royal Heights Subdivision. On September 21, 2009, the Board approved an application to the North Carolina Department of Commerce’s Division of Community Assistance for a 2010 Community Development Block Grant (CDBG). The CDBG Program is designed to enable eligible local governments to install municipal public water and/or sewer line(s) with taps and connections to low to moderate-income households, which are defined as households at 80% or less of the median family income for the county or Metropolitan Statistical Area in which the residence is located. On January 29, 2010, the County received notification of funding in the amount of \$308,500 for a 2010 CDBG Infrastructure Grant to provide municipal water service for the Royal Heights Subdivision, located off Old Shelby Road in the Advent Crossroads area of southwest Catawba County, to alleviate poor water quality and quantity. The grant will provide for approximately 2,100 linear feet of water lines to serve 22 homes, and provide 19 households with free taps and connections. These 19 households are eligible for assistance based on low-to-moderate income thresholds. The remaining three households are over the income limits for the grant and will be responsible for the cost of taps and connections. On March 15, 2010, the Board approved a project budget ordinance, a budget revision that included the \$308,500 from the CDBG Infrastructure Grant and \$21,500 (7%) in County funding, and an administrative contract with the Western Piedmont Council of Governments for the project.

On March 26, 2010, responses to a Request for Qualifications (RFQ) were received from fourteen engineering firms. A selection committee, consisting of Jack Chandler, Assistant Director of Utilities and Engineering; Debbie Anderson, Purchasing Agent; Jonathan Greer, Project Manager; Kevin Greer, the City of Hickory’s Assistant Director of Public Utilities, and Laurie Powell, Grant Administrator for the Western Piedmont Council of Governments, reviewed the RFQs and selected McGill Associates, PA of Hickory, based upon that firm’s qualifications. A contract for engineering services in the amount of \$25,400, was awarded by staff on May 25. The Royal Heights Subdivision Water project is being developed in cooperation with the City of Hickory under County Code, Chapter 42, Revenue Sharing Program. An applicable interlocal agreement was approved by the Hickory City Council on May 18, 2010. Commissioner Hunsucker made a motion to approve this interlocal agreement. The motion carried unanimously. The following agreement applies:

STATE OF NORTH CAROLINA

CATAWBA COUNTY

AGREEMENT BETWEEN CATAWBA
COUNTY AND THE CITY OF HICKORY
FOR REVENUE SHARING -
ROYAL HEIGHTS SUBDIVISION WATER
PROJECT

THIS AGREEMENT made and entered into this _____ day of _____, 2010, by and between **CATAWBA COUNTY**, (hereinafter “County”), a body politic corporate in nature, and the **CITY OF HICKORY**, (hereinafter “City”), a North Carolina municipal corporation.

WITNESSETH:

WHEREAS, the County has adopted into its Catawba County Code, Chapter 42, entitled “WATER AND SEWER”, including specifically Article IV, Division II, the “REVENUE SHARING PROGRAM”,

and the City has agreed to enter into a Revenue Sharing Agreement with County for the purpose of funding a waterline extension to serve the Royal Heights Subdivision, (hereinafter "Project"); and

WHEREAS, County and City agree to cooperate on the Project in order to provide extensions and connections to an area previously unserved by a municipal water system; and

WHEREAS, County and City agree to share the responsibility of locating, funding, and maintaining the lines and connections in order to provide a safe and reliable source of water.

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

County and City agree that those portions of Chapter 42, of the Catawba County Code pertaining to Revenue Sharing shall be and are incorporated by reference into this Agreement. In addition to the requirements and conditions provided in Chapter 42, County and City agree to the following additional terms and conditions:

1. Project shall consist of approximately 2,100 linear feet of 8-inch PVC and ductile iron water lines from the existing 8-inch water line on Royal Heights Circle, complete with valves, hydrants, and related appurtenances, and shall include approximately 22 new customers proposed to receive new water service.
2. City and County agree the approximate cost of the Project including design, legal fees, rights-of-way, permitting fees and line placement is Three Hundred Eight Thousand Five Hundred dollars (\$308,500), which will be funded by a Community Development Block Grant (CDBG). The County will fund any costs that exceed the estimated cost of \$308,500. The parties agree to consult with each other prior to making any changes in Project specifications. If any such changes are made which result in changed cost, the total cost of the Project will be adjusted accordingly.
3. County shall have the right, at its option, to construct and install future line additions, extensions or connections from any water line(s) installed and operated as part of the Project, provided any such addition, extension or connection will serve County customers and not customers inside City's corporate limits and adequate capacity is available. If some portion of such addition, extension or connection is within the City's corporate limits, City shall have the right to add to, connect to or extend the line to its citizens with no participation from County.
4. County agrees not to serve Wholesale / Bulk Water Customers for resale of water without written permission from City of Hickory.
5. If City, upon its own initiative, proposes to County to make an addition, extension or connection to Project lines, County shall within ninety (90) days notify City of its intention to participate in the addition, extension or connection. If County opts to participate in the addition, extension or connection, the operation and maintenance of the line, along with the disbursement of revenue, will be governed by this Agreement.
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9. County shall design and develop the Project, and shall secure all necessary rights-of-way, permits and permission from all persons, firms, corporations and other owners for construction of the Project. Further, County shall assume responsibility for the completion of the Project. The Application for Approval of Engineering Plans and Specifications for Water Supply Systems, to be submitted to the Public Water Supply Section of NCDENR, shall be in the name of City. Any NCDOT encroachments required to complete the Project shall be in the name of the City.
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IN WITNESS WHEREOF, both parties have hereunto set their hands on the day and year above first written.

CATAWBA COUNTY BOARD OF COMMISSIONERS

By: _____
Katherine W. Barnes, Chair

ATTEST:

Barbara Morris, Clerk

CITY OF HICKORY

By: _____
Rudy Wright, Mayor

ATTEST:

Pamela S. Tallent, City Clerk

- 11 Other Items of Business: None.
- 12. Attorneys' Report: None.
- 13. Manager's Report: None
- 14. Adjournment: Chair Barnes adjourned the meeting at 7:30 p.m.

Katherine W. Barnes, Chair
Catawba County Board of Commissioners

Barbara E. Morris
County Clerk