

REQUEST FOR BOARD ACTION

HENDERSON COUNTY

BOARD OF COMMISSIONERS

MEETING DATE: 19 May 2006

SUBJECT: Agreement with Windsor-Aughtry Company, Inc., regarding
Mud Creek Sewer project

ATTACHMENT(S): Draft Agreement

SUMMARY OF REQUEST:

Attached is a proposed Agreement with Windsor-Aughtry Company, Inc., regarding their contribution of \$300,000.00 toward the cost of the Mud Creek Sewer Interceptor project. This is consistent with the Board's previous discussions and direction on this issue.

PROPOSED BOARD ACTION:

If the Board is so inclined, the following motion is suggested:

I move that the Board accept the proposed agreement with Windsor-Aughtry Company, Inc.

STATE OF NORTH CAROLINA

COUNTY OF HENDERSON



AGREEMENT

This AGREEMENT is made on _____, 2006, by and between Henderson County, a body corporate and politic of North Carolina ("Henderson County"), Cane Creek Water and Sewer District, a body corporate and politic of North Carolina ("CCWSD"), and Windsor/Aughtry Company, Inc., a South Carolina corporation ("Windsor/Aughtry").

WITNESSETH:

WHEREAS, Windsor/Aughtry is the developer of a substantial residential subdivision, containing at least five hundred twenty-four (524) residential homesites, to be known as River Stone Subdivision ("the Subdivision"), within Henderson County; and,

WHEREAS, the Subdivision is of a density as to require sanitary sewer for its homes; and,

WHEREAS, Henderson County's sanitary sewer master plan includes the "Mud Creek Interceptor" project ("the Mud Creek project"), which is contemplated for future construction as a part of CCWSD; and,

WHEREAS, the Mud Creek project would provide service to the Subdivision, and its early construction would benefit Windsor/Aughtry; and,

WHEREAS, Windsor/Aughtry will proceed on its schedule with construction and development of the Subdivision understanding Henderson County's plan to construct the Mud Creek project in a timely manner; and

WHEREAS, as an inducement for Henderson County and CCWSD to commence the construction of the Mud Creek project, Windsor/Aughtry is willing to make the payment set out herein; and,

WHEREAS, Henderson County and CCWSD are willing, on the terms contained herein, to commence planning and construction of the Mud Creek Interceptor.

NOW, THEREFORE, IT IS AGREED BY THE PARTIES, in return for the sum of One Dollar (\$1.00) and other good and valuable consideration, including the promises and covenants contained herein, as follows:

1. Henderson County and CCWSD will endeavor to construct the Mud Creek project, as follows:
 - a. Henderson County will contract with William G. Lapsley and Associates, P.A., to design and engineer the Mud Creek project in a manner that meets Henderson County's needs, and those needs of the Subdivision, so long as not incurring extra cost for Henderson County or CCWSD.
 - b. Henderson County and CCWSD will use their best efforts to secure financing for the construction of the Mud Creek Interceptor, in whole or in part (or in stages or phases).
 - c. Henderson County and CCWSD will prioritize the Mud Creek project such that the first portion or phase will include that serving the Subdivision, and will use their best efforts to insure that this phase is completed in a timely manner in keeping with the needs of Windsor/Aughtry.

2. It is currently contemplated that phase one of the Mud Creek project will consist of two sections. Section I will consist of a main sanitary sewer lift station, a force main, and approximately 3,500 linear feet of gravity sewer line. Section II will consist of approximately 1,500 linear feet of gravity sewer line, a sewer lift station and a sewer force main. In order to serve the Subdivision, a sanitary sewer lift station and force main

must be completed. In the event that the Subdivision has need of the system to be completed by Henderson County and CCWSD in advance of the system's actual completion, Henderson County and CCWSD shall endeavor to obtain a North Carolina "pump and haul" permit to allow removal of waste generated within the Subdivision at no additional cost (in addition to normal monthly recurring and one-time fees and costs charged by CCWSD) to Windsor/Aughtry.

3. Henderson County and CCWSDS will charge, and Windsor/Aughtry will pay, all one-time per-lot fees and costs only as each phase of the Subdivision is granted plat approval by the Henderson County Planning Board, and only for the lots included in each such phase as it is granted plat approval.

4. Upon the completion of Section I, and upon submission by CCWSD to Windsor/Aughtry of a copy of the engineer's certification of completion for the Mud Creek Phase I Section I, Windsor/Aughtry shall pay to Henderson County the sum of Three Hundred Thousand Dollars (\$300,000.00). Should Windsor/Aughtry convey all or any part of its interest in the Subdivision, such act will not relieve it of its obligation pursuant to this paragraph.

5. All parties hereto, for themselves, their successors and assigns, consent to William G. Lapsley and Associates, P.A., acting as the project engineer and designer for the Mud Creek project while simultaneously acting as land planner and engineer for the Subdivision on behalf of Windsor/Aughtry, so long as no actual conflict of interest arises.

6. Should Henderson County and CCWSD abandon the Mud Creek Phase I Section I, or fail to make substantial progress toward the completion of the same by 31 December 2006, Windsor/Aughtry shall in such event be relieved of its responsibility to make the payment required in paragraph 4, above, and this agreement shall be deemed to be terminated. Further, if the project is abandoned by 31 December 2006, Windsor/Aughtry Company, Inc. shall have the right to connect to the line located upon the property of ROQCO, LLC as the same is shown on that plat recorded in Slide 4811 in the Henderson County Register of Deeds. If Windsor/Aughtry Company, Inc. does so connect to this alternative line after abandonment of this project by Henderson County, it shall have no obligation to remit any of the \$300k to Henderson County.

7. Windsor/Aughtry shall to pay the then-existing per lot sewer fee required by Henderson County for each phase in the Subdivision at the time of application for sewer service, in accordance with standard policies of the Cane Creek Water and Sewer District..

Agreed to this the _____ day of _____, 2006.

HENDERSON COUNTY

By: _____
WILLIAM L. MOYER
Chairman, Henderson County Board of Commissioners

Attest:

[SEAL]

Secretary to the Board of Commissioners

CANE CREEK WATER AND SEWER DISTRICT

By: _____
WILLIAM L. MOYER
Chairman, Henderson County Board of Commissioners

Agreement

In the Capacity as the governing body of Cane Creek Water and Sewer District

Attest:

[SEAL]

Secretary to the Board of Commissioners

WINDSOR/AUGHTRY COMPANY, INC.

By: _____
President

Attest:

[CORPORATE SEAL]

Secretary to the Corporation