

DRAFT

3/21/11

MINUTES

cc: BOC
Steve
Selena
Russ
Christy

**STATE OF NORTH CAROLINA
COUNTY OF HENDERSON**

**BOARD OF COMMISSIONERS
WEDNESDAY, MARCH 16, 2011**

The Henderson County Board of Commissioners was scheduled for a regularly meeting at 9:00 a.m. in the Commissioners' Meeting Room of the Historic Courthouse on Main Street, Hendersonville.

Those present were: Vice-Chairman Tommy Thompson, County Manager Steve Wyatt, County Attorney Russ Burrell, Research/Budget Analyst Amy Brantley, PIO Christy DeStefano and Clerk to the Board Teresa Wilson.

Vice-Chairman Tommy Thompson noted the lack of a quorum and directed a quorum call to be held at 2:00 p.m.

At 2:00 p.m. the Henderson County Board of Commissioners held a quorum call and noted the following present.

Those present were: Chairman Michael Edney, Vice-Chairman Tommy Thompson, Commissioner Bill O'Connor, Commissioner Larry Young, Commissioner Charlie Messer, County Manager Steve Wyatt, Assistant County Manager Selena Coffey, and Clerk to the Board Teresa Wilson.

Also present were: Public Information Officer Christy DeStefano, Finance Director J. Carey McLelland, Planning Director Anthony Starr, Associate County Attorney Sarah Zambon, Construction Manager David Berry, Engineer Marcus Jones, Research/Budget Analyst Amy Brantley, Assessor/Tax Collector Stan Duncan, Planner Autumn Radcliff, and Planner Matt Cable.

Vice-Chairman Tommy Thompson made the motion that a polling of the membership for the purposes of establishing a quorum be waived, as obviously a quorum is now present. All voted in favor and the motion carried. Mr. Thompson turned the meeting over the Chairman Edney.

CALL TO ORDER/WELCOME

Chairman Edney welcomed all in attendance.

PLEDGE OF ALLEGIANCE

The Pledge of Allegiance to the American Flag was led by Commissioner Thompson.

INVOCATION

County Manager Steve Wyatt gave the invocation.

INFORMAL PUBLIC COMMENT

- 1) Leon Allison – Mr. Allison spoke in regards to youth baseball. He feels many parents are upset at the way it is being run. He was concerned with a problem of segregation. Henderson County leases the fields at Jackson Park to individuals running under the name of Henderson County Youth Baseball. They have their own teams competing with other teams and a lot of the umpires are honorable, but a lot of calls are going wrong. He feels that one of the assistants has too much temper to be around young people. This man has been aggressive and shaken Mr. Allison's grandson once, and Mr. Allison will take legal action if it happens again. He screams, yells, and curses at his team and there have been other incidents to note. Mr. Allison suggests, for the better of Henderson County, that the County hire someone to take care of the youth baseball of Henderson County instead of leasing the fields. The money raised could pay the salary with no cost to the taxpayers. Mr. Allison's company

APPROVED:

would be willing to donate 30-40 trees this winter for shade which is much needed. He is willing to do this free of charge but not with someone else putting the money in their pocket. If Henderson County takes over, it would provide an outlet to complain to that doesn't fall on deaf ears. He asked that this be discussed at a later meeting.

DISCUSSION/ADJUSTMENT OF AGENDA

Commissioner Young made the motion to adopt the Agenda with the addition of a closed session. All voted in favor and the motion carried.

CONSENT AGENDA

Commissioner Young made the motion to adopt the Consent Agenda as presented. All voted in favor and the motion carried.

CONSENT AGENDA consisted of the following:

Minutes

Draft minutes were presented for board review and approval of the following meeting(s):
March 7, 2011 – Regularly Scheduled Meeting

Tax Collector's Report

Deputy Tax Collector Carol McCraw had presented the Tax Collector's Report to the Commissioners dated March 4, 2011 for information only. No action was required

Tax Refunds

A list of 5 refund requests was presented for the Board of Commissioners review and approval.

Motion:

I move the Board approves the Tax Refund Report as presented.

Tax Releases

A list of 24 tax release requests was presented for the Board of Commissioners review and approval.

Motion:

I move the Board approves the Tax Release Report as presented

Contract with American Recycling for materials recycling

The Board was requested to approve the draft contract with American Recycling for materials recycling. It has been reviewed for legal matters by the County Attorney, and by the County Engineer for compliance with the bid specifications. It has been executed by American Recycling.

Motion:

I move that the Board approves the draft contract with American Recycling.

Construction Management Update

David Berry had provided a monthly report as a review of the scope and status of assigned construction management responsibilities.

Capital Facilities Status Reports

Internal Auditor Darlene Burgess had provided a status report to the Commissioners for activity during the month of February, 2011 on Capital and Facilities projects.

Nominations

1. Apple County Greenway Commission – 4 vac.

There were no nominations at this time so this item was rolled to the next meeting.

2. CJPP (Criminal Justice Partnership Program) – 2 vac.

There were no nominations at this time so this item was rolled to the next meeting.

3. Community Child Protection Team – 1 vac.

Commissioner O'Connor nominated Angie Alley for position #5. *Chairman Edney made the motion to accept the appointment of Angie Alley to position #5 by acclamation. All voted in favor and the motion carried.*

4. Downtown Hendersonville, Inc. – 1 vac.

There were no nominations at this time so this item was rolled to the next meeting.

5. Environmental Advisory Committee – 1 vac.

There were no nominations at this time so this item was rolled to the next meeting.

6. Equalization and Review, Henderson County Board of – 3 vac.

Commissioner Young nominated for reappointment William Alexander, Jr. for position #3, Don Dalton for position #5 and John Bell for position #7. *Chairman Edney made the motion to accept the reappointments of William Alexander to position #3, Don Dalton to position #5, and John Bell to position #7 by acclamation. All voted in favor and the motion carried.*

7. Fletcher Planning Board – 1 vac.

Commissioner Messer nominated Duane Gentle for position #1. *Chairman Edney made the motion to accept the reappointment of Duane Gentle to position #1 by acclamation. All voted in favor and the motion carried.*

8. Home and Community Care Block Grant Advisory Committee – 1 vac.

There were no nominations at this time so this item was rolled to the next meeting.

9. Juvenile Crime Prevention Council – 8 vac.

There were no nominations at this time so this item was rolled to the next meeting.

10. Mountain Area Workforce Development Board – 1 vac.

Commissioner Young nominated Barry Brown for position #5. *Chairman Edney made the motion to accept the appointment of Barry Brown to position #5 by acclamation. All voted in favor and the motion carried.*

11. Mountain Valleys Resource Conservation and Development Program – 1 vac.

Commissioner Thompson nominated Andrew Brannon for position #1. *Chairman Edney made the motion to accept the reappointment of Andrew Brannon to position #1 by acclamation. All voted in favor and the motion carried.*

12. Nursing/Adult Care Home Community Advisory Committee – 1 vac.

There were no nominations at this time so this item was rolled to the next meeting.

13. Senior Volunteer Services Advisory Council – 3 vac.

There were no nominations at this time so this item was rolled to the next meeting.

14. Solid Waste Advisory Committee – 3 vac.

Commissioner Young nominated James Phelps for position #2, Emily Anderson for position #5, and Thomas Gregory McMinn for position #9. *Chairman Edney made the motion to accept the reappointment of James Phelps to position #2, Emily Anderson to position #5, and Thomas Gregory McMinn to position #9 by acclamation. All voted in favor and the motion carried.*

WESTERN HIGHLANDS AREA AUTHORITY MEDICAID WAIVER PROJECT

County Manager Steve Wyatt introduced Arthur Carder, CEO of Western Highlands. The North Carolina Department of Health and Human Services recently designated the Western Highlands Local Management Entity (LME) to participate in the ongoing 1915(b)/(c) Medicaid Waiver for mental health, developmental disabilities, and substance abuse services delivered to Medicaid recipients within the LME area. The Waiver allows Western Highlands to manage and authorize all Medicaid and State-funded mental health, developmental disabilities, and substance abuse services locally with the public policy purpose to deliver “the right services to the right person at the right time in the right amount at the right cost”.

The Medicaid program is a Federal run but State administered medical insurance program for folks that meet certain income requirements. Mental health is a big part of that program and the state has historically administered those federal dollars and some state dollars through a contract with a private company called Value Options. The State, in looking again for ways to improve mental health service delivery, has endorsed a program to decentralize the administration of the Medicaid mental health program to the local level, LME’s. The LME’s must go through an application process in order to get that authority to bring the administration down to the local level. It is a competitive process. The Western Highlands Board voted last year to submit an application and compete for the ability to administer the Medicaid funds and have been notified by the State of North Carolina that they are ready to award that ability. To implement the Medicaid waiver locally, each Board of County Commissioners must make approval by resolution.

Arthur Carder shared that based on the 2010 data received from the state an estimated \$93 million in Medicaid funds will be coming to the LME along with the \$27 million currently received from the State. The state will be providing approximately \$11 million to Western Highlands for the LME to pay for staffing and operations, as well as, providing 2% of the total cost of the Medicaid project for Western Highlands to build a risk pool.

To move forward with the Waiver Project, the Board’s of Commissioners in the eight counties comprising the Western Highlands LME must endorse the LME’s participation in the proposed Medicaid Waiver project.

Commissioner Messer made the motion that the Board adopts the Resolution provided endorsing the Western Highlands Area Authority Network’s participation in the proposed Medicaid 1915(b)/(c) Waiver under the conditions outlined in the Resolution. The motion passed 4-1 with Commissioner O’Connor voting nay.

DRAFT DANA COMMUNITY PLAN OVERVIEW

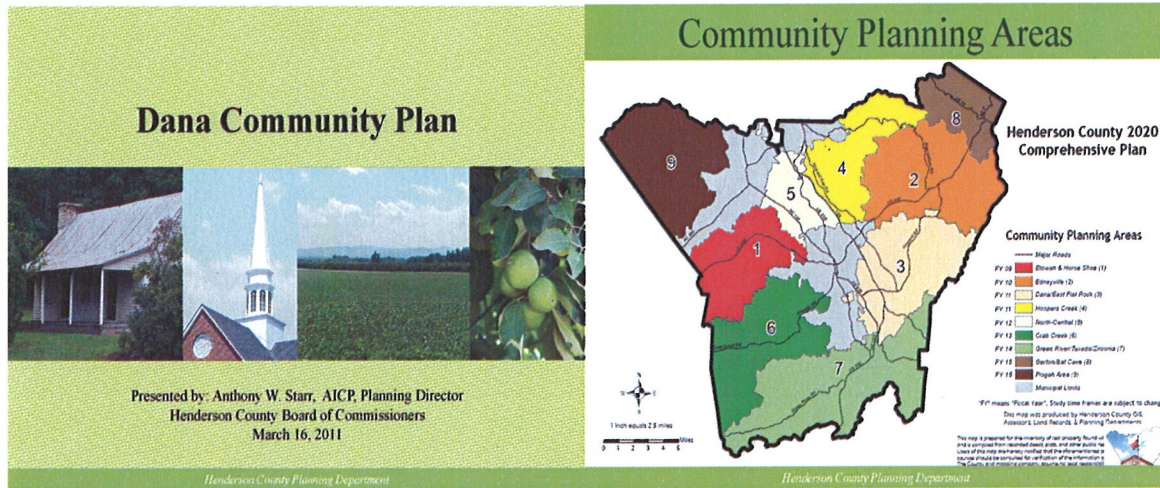
Planning Director Anthony Starr stated the Dana Community Plan Advisory Committee, formed by the Board of Commissioners on May 4, 2009, was responsible for developing and recommending a community-specific comprehensive plan for the Dana, Tracy Grove and Upward communities. After over a year of monthly meetings, holding two public input sessions, and receiving information from County staff and relevant experts, the Committee completed the Draft Dana Community Plan.

On December 16, 2010, the Planning Board held a joint meeting with the Dana Community Plan

Advisory Committee. On January 20, 2011 the Planning Board voted unanimously to send forth a favorable recommendation of the Dana Community Plan.

Staff provided a brief PowerPoint presentation highlighting the sections and recommendations of the Draft Plan. Copies of the Draft Plan were distributed to the Board of Commissioners in February. The Board may wish to schedule more detailed discussions, including a workshop, or adopt the plan. As with any plan, adoption does not obligate the County to implement every recommendation. Given that circumstances and needs change, the County may not move forward with all action items.

No action is needed other than to determine the Board’s next step (continued discussion, workshop, or adoption).



Community Planning Benefits - Community Plans...

1. Actively engage citizens in the governing process
2. Solicit community input and feedback
3. Result in cost avoidance by prioritizing community needs
4. Employ changes for the betterment of communities

Commissioner Messer left during this agenda item.

The Planning Process - Dana Community Plan Advisory Committee

Tommy Thompson, Chairman

Jeff Justus, Vice Chairman

Roger Byers

Harry Fozzard

Jim Gedwellas

Danny McConnell

Lee Roy Nicholson

Norma Pryor

James Revis

Henderson County Planning Board Liaison, Tommy Laughter
 Blue Ridge Community College Representative, Matt Matteson
 City of Hendersonville Representative, Tim Murphy

Community Plan Organization	Planning Area Demographics
<p>Section 1: Introduction to the Planning Area Section 2: Demographics of the Planning Area Section 3: Community Plan</p> <ul style="list-style-type: none"> 3.1. Natural and Cultural Resources 3.2. Agriculture 3.3. Housing 3.4. Community Facilities and Public Services 3.5. Transportation 3.6. Economic Development 3.7. Land Use and Development 3.8. Community Character and Design 	<p style="text-align: center;">Planning Area Population & Households</p>
<i>Henderson County Planning Department</i>	<i>Henderson County Planning Department</i>

Section 3: Dana Community Plan	Section 3.1. Natural and Cultural Resources
<ul style="list-style-type: none"> Section 3.1. Natural and Cultural Resources Section 3.2. Agriculture Section 3.3. Housing Section 3.4. Community Facilities and Public Services Section 3.5. Transportation Section 3.6. Economic Development Section 3.7. Land Use and Development Section 3.8. Community Character and Design 	<ul style="list-style-type: none"> • Sensitive Water Resources • Sensitive Land Resources and Protected Species • Cultural and Historical Resources
<i>Henderson County Planning Department</i>	<i>Henderson County Planning Department</i>

Section 3.1. Key Goals and Objectives	Section 3.2. Agriculture
<ul style="list-style-type: none"> • Protect land quality within the Dana Planning Area... <ul style="list-style-type: none"> - Consider standards, requirements, incentives or other methods to preserve Dana Planning Area mountain views, and - Consider expanding ridge top protection regulations 	
<i>Henderson County Planning Department</i>	<i>Henderson County Planning Department</i>

Section 3.3. Housing

- The Planning Area contains:
 - Over 3,200 permanent residential units
 - 21% of all manufactured homes within the County
- \$163,768 = Planning Area average assessed housing value (2010)
- Over 50% of Planning Area households (2010) cannot afford an average valued Planning Area home*

*Using HUD standards for affordability

Section 3.3. Key Goals and Objectives

- Expand and diversify housing options.
 - The County should consider applying additional design standards for multifamily units in the Dana Planning Area to ensure continuity with the surrounding rural community.


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Section 3.4. Community Facilities & Public Services

- The Planning Area contains:
 - Schools: Dana, Sugarloaf, and Upward Elementary
 - Dana Park
 - Dana Volunteer Fire and Rescue Department
- The Planning Area is also served by:
 - Schools:
 - Edneyville and Hillandale Elementary,
 - Apple Valley and Flat Rock Middle, and
 - North Henderson and East Henderson High
 - Blue Ridge and Edneyville Fire and Rescue Stations
 - City of Hendersonville Water and Sewer (portions)
 - Henderson County Public Libraries (Main Branch)

Section 3.4. Key Goals and Objectives

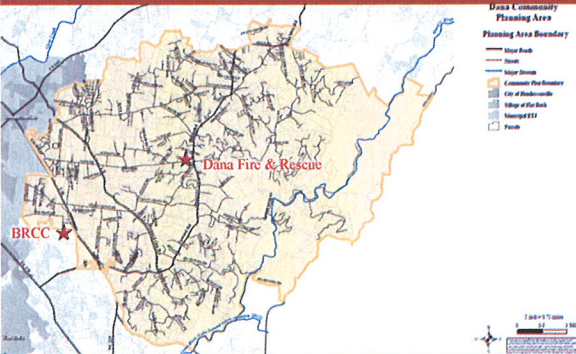


Dana Community Park
Henderson County, North Carolina
Conceptual Master Plan - August 25, 2010

Henderson County Planning Department

Henderson County Planning Department

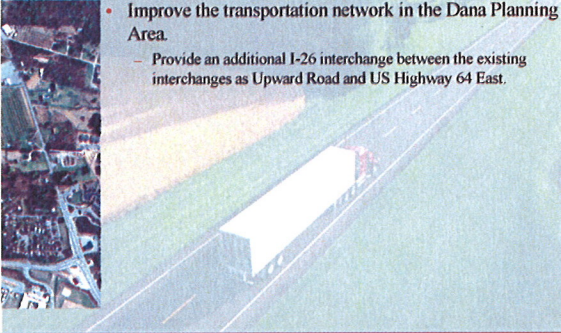
Section 3.5 Transportation



Dana Community Planning Area
Planning Area Boundary
Water Body
Road
Water Stream
Community Plan Boundary
City of Hendersonville
Village of Flat Rock
Hendree EIS
Parks

Section 3.5 Key Goals and Objectives

- Improve the transportation network in the Dana Planning Area.
 - Provide an additional I-26 interchange between the existing interchanges as Upward Road and US Highway 64 East.



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Section 3.6. Economic Development

- **Planning Area workforce:**
 - Has been impacted by unemployment (9.1% in 2009)
- **Planning Area advantages:**
 - Connectivity
 - Existing commerce and industry
 - Workforce more responsive to industry change as is spread more evenly across more industries than elsewhere within the County

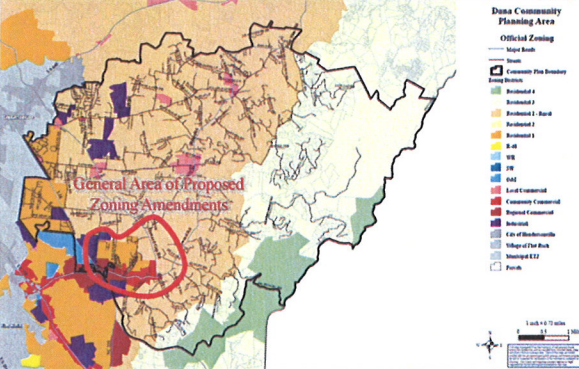
Section 3.6. Key Goals and Objectives

- The Upward Road interchange along I-26 should be recognized as a principal gateway into Henderson County, Dana, Hendersonville, and Flat Rock.
- Encourage higher density residential development in the areas near and mixed within nonresidential development at the interchange.

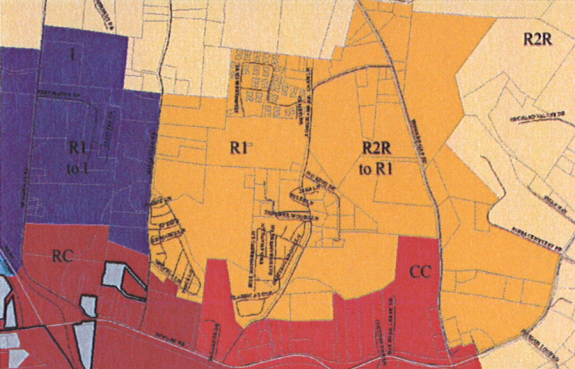
Henderson County Planning Department

Section 3.7 Land Use and Development




Henderson County Planning Department

Section 3.7 Key Goals and Objectives (Zoning)



Henderson County Planning Department

Section Key 3.8. Goals and Objectives



Community character should be protected for the Dana Planning Area with particular attention to the Downtown Dana area and the interchange at Upward Road.

- Building orientation
- Facade articulation
- Glazing
- Parking orientation
- Provision of pedestrian access
- Signage
- Architectural character
- View preservation, and
- Interconnectivity/traffic management

Henderson County Planning Department

Commissioner Messer had exited the meeting prior to the motion.

Commissioner Young made the motion that the Board adopts the Draft Dana Community Plan as presented. He further moved that the goals and objectives be reviewed by Board appointed committees and boards for their implementation if deemed appropriate. Committees and boards should report back to this Board any items where it recommends an alternate approach or does not recommend implementation. The vote passed 4-0.

TUXEDO MILL DEMOLITION

Construction Manager David Berry stated that Mark Pace Construction continues work on the demolition of the old mill and progress continues to be steady. The contractor has logistically torn down the structures and is still recycling and/or selling off the remaining salvageable components. They have now completed the hauling (trucking) of 95% of the landfill debris. The contractor had initially left the exterior walls of some of the buildings in place to contain the site. These walls have now been demolished and removed. The contractor has now brought his concrete crushing equipment onsite to process remaining stockpiled masonry and the concrete slabs. Upon final completion of the demolition and removal of recycled crushed masonry and concrete materials, the contractor will grade, seed, and straw the site. County staff continues to work with Mark Pace on any issues and will continue to monitor the progress of the demolition.







Upon the completion of the demolition, Henderson County staff will then seek approval to have the site further tested for any contaminants, unsuitable soils, etc. that might result in liabilities should Henderson County acquire ownership of the property.

Mr. Berry provided brief updates of all projects in process in Henderson County at this time.

UPDATE ON 2011 REAPPRAISAL

Assessor Stan Duncan had requested an opportunity to appear before the Board in open session to update them as to the status of the 2011 general reappraisal, and to answer any questions they may have. The task is to reappraise all real property at Market Value effective January 2, 1011.

- 65,900 Total Parcels of Real Property
- 62,440 Parcels of Land
- 37,067 Single-Family Residential Properties
- 3,219 Condominiums/Townhomes
- 4,644 Commercial/Industrial Parcels
- 1,622 Parcels in Present-Use Value (Agriculture, Horticulture, Forestland)
- 1,362 Parcels w/ Tax Relief (Elderly/Disabled & Veterans Tax Relief)
- 1,802 Fully-Exempt Parcels (Charitable, Educational, Religious, Etc.)

Change in Median Sales Price – Median Residential Values by Calendar Year

2006: \$203,000

2007: \$225,000 – up to 10.84% during calendar year 2007

2008: \$200,000 – down 11.11% for calendar year 2008

2009: \$184,000 – down 9.36% since 2006, prior to peak in 2007

2010: \$185,000 – down 8.87% since 2006, prior to peak in 2007

Last 6 months of 2010: Median Sales for each of the last 6 months in 2010 varied only slightly from the \$185,000 Median determined for all of Calendar Year 2010.

The Uniform Appraisal Standard (N.C.G. S. 105-283) states that all property, real and personal, shall as far as practicable be appraised or valued at its true value in money. When used in this Subchapter, the words “true value” shall be interpreted as meaning market value, that is, the price estimated in terms of money at which the property would change hands between a willing and financially able buyer and a willing seller, neither being under any compulsion to buy or to sell and both having reasonable knowledge of all the uses to which the property is adapted and for which it is capable of being used.

Market Value is Value in Exchange, but not necessarily the most recent price paid in an arms length transaction when competent evidence of a different value is presented, and not the highest or lowest value but the most probable value, not a foreclosure or “short sale”. Other considerations are that reappraisals recognize and measure change. Not all properties change at the same rate. There are differences among property locations and property types.

Changing Markets

Location	2007 \$	2011 \$	% Change
Seven Falls	\$ 44.5M	\$ 9.3M	-79%
Plaza/Mountains	\$ 7.2M	\$ 2.6M	-64%
Cobblestone	\$ 7.9M	\$ 4.1M	-49%
Champion Hills	\$133.8M	\$115.1M	-14%
Blue Ridge Villas	\$ 11.4M	\$ 10.3M	-9.3%
Kenmure	\$317.5M	\$292.3M	-7.9%
Southchase	\$ 63.3M	\$ 58.5M	-7.5%
Haywood Knolls	\$ 68.9M	\$ 63.8M	-7.4%
Livingston Farms	\$ 52.6M	\$ 49.0M	-6.8%
Ambassador Condo	\$ 1.5M	\$ 1.6M	+6.5%
River Stone	\$ 43.0M	\$ 49.3M	+14.7%
Lake Summit	\$ 59.8M	\$ 97.7M	+63.3%

Cumulative Effect on Tax Base

2010	Component	2011	% Change
\$11,390,000,000	Real Property	\$10,175,000,000	-10.67%
\$ 740,000,000	Personal Property	\$ 635,000,000	-14.19%
\$ 200,000,000	Public Service Co.	\$ 185,000,000	-7.5%
\$ 735,000,000	Registered MV's	\$ 775,000,000	+5.44%
\$13,065,000,000	Total Tax Base	\$11,770,000,000	-9.91%

Note: the above represent the best estimate at this time taking into consideration future appeals, tax relief applications, and BPP Submissions.

Historical Perspective

2007	% of Base	Component	2011	% of Base
\$10,437,410,000	84.90%	Real Property	\$10,175,000,000	86.45%
\$ 873,186,000	7.10%	RMV's	\$ 775,000,000	6.58%
\$ 799,000,000	6.50%	Personal Prop.	\$ 635,000,000	5.40%
\$ 185,000,000	1.50%	Public Serv. Co.	\$ 185,000,000	1.57%
\$12,294,596,000	100%	Total Tax Base	\$11,770,000,000	100%

Note: The current shift in the tax base is atypical of the norm.

Appeal Process

- Reappraisal Notices to be mailed on Friday, March 18th
- 30-days from date of Notice to appeal informally
 - Return bottom half of Reappraisal Notice to the County Tax Department
 - Property owner may request an on-site visit
 - Tax Department will review and mail a 2nd Notice of results of the review
- 30 days from date of 2nd Notice to appeal to Board of Equalization & Review.
- Afterwards, appeals may be timely-filed to the NC Property Tax Commission, and in some instances on to the NC Appellate Courts.

NUCKOLLS BUILDING

The County Manager asked the Board of Commissioners to begin discussion in regard to the future of the Nuckolls Building.

Steve Wyatt shared that the Nuckolls Building is approximately 16,500 square feet occupied by the Sheriff's Department. By the end of this year, weather permitting, the building will be vacant. At some point and time the Board will need to determine the future of the building and property, and also a Henderson County Appraiser will need to take a look at the property and provide a ball park value. It is a great location but the building offers challenges.

WEEKEND OF OBSERVANCE FOR THE 10TH ANNIVERSARY OF THE 9/11 ATTACKS

Christy DeStefano, PIO, provided a presentation of preliminary events and plans for the weekend of September 9/11 2011. Friday, September 9, 2011 would include "Patriotic Music" to be played by local school bands and glee clubs, Saturday, September 10, 2011, the Heritage Museum will plan related programming, and on Sunday, September 11, 2011, for the third year in a row the Henderson County TEA Party will hold observance.

Commissioner O'Connor made the motion that the Board approves the weekend of observation for the tenth anniversary of the 9/11 attacks and give staff permission to move forward with planning. The motion passed 4-0.

COUNTY MANAGER'S REPORT

There was nothing further.

IMPORTANT DATES

No dates were noted.

CLOSED SESSION – ADD ON

Commissioner O'Connor made the motion for the Board to go into closed session as allowed pursuant to NCGS 143-318.11 for the following reasons:

1. Pursuant to N.C. Gen. Stat. § 143-318.11(a)(3), To consult with an attorney retained or employed by the Board. This consultation includes, but is not limited to, matters involving the lawsuit In the Matter of the Appeal of Arvin-Meritor before the North Carolina Property Tax Commission.
2. Pursuant to N.C. Gen. Stat. § 143-318.11(a)(4), To discuss matters relating to the location or expansion of industries or other businesses in the area served by the public body.

All voted in favor and the motion carried.

Commissioner O'Connor made the motion to go out of closed session and reconvene into open session at 6:10 p.m. All voted in favor and the motion carried.

Commissioner Messer returned during closed session.

RECONVENE INTO OPEN SESSION

Chairman Edney called the meeting back to order.

The Board approved a settlement of the pending matter of In the Matter of the Appeal of ArvinMeritor pending before the North Carolina Property Tax Commission, as follows:

- 1. **Settlement of the Business-Personal Property, as follows;**
 - a. 2008 \$66,689,298
 - b. 2009 \$68,145,828
 - c. 2010 \$65,443,934

- 2. Issue a Consent Order on the appeal from Rockwell on the Real Property, as follows:
 - a. 2008 \$17,344,200 less \$2,416,300 to a new assessed value of \$14,927,900.
 - b. 2009 Same as above
 - c. 2010 Same as above

The total assessed value under appeal in 2008, for the Business-Personal and Real Property was: \$84,033,498

The total assessed value agreed to among the parties for 2008, was: \$81,617,198

The total assessed value agreed to among the parties for 2009, was: \$83,073,728

The total assessed value agreed to among the parties for 2010, was: \$80,371,834

Commissioner O'Connor made the motion that the Board makes public an agreement previously made on the taxes for Arvin Meritor Corporation be published and included with the minutes. All voted in favor and the motion carried.

Amendments to the Articles of Incorporation of the Henderson County Hospital Corporation

The Board then briefly discussed the amendment of the Articles of Incorporation of Henderson County Hospital Corporation regarding joint ventures.

Commissioner Young made the motion to add the item to the Board's agenda, and accept the County Attorney's recommended amendment for the Articles of Incorporation of the Henderson County Hospital Corporation. All voted in favor and the motion carried.

ADJOURN

Commissioner Thompson made the motion that the Board adjourn at 6:15 p.m. All voted in favor and the motion carried.

Attest:

Teresa L. Wilson, Clerk to the Board

J. Michael Edney, Chairman

HENDERSON COUNTY TAX DEPARTMENT

Collector's Office

200 North Grove Street

Suite 66

Hendersonville, NC 28792

Phone: 828/697-5595

Fax: 828/698-6153

www.hendersoncountync.org/tc/

Stan C. Duncan
County Assessor & Tax Collector

Sandy Allison
Administrative Assistant II

March 4, 2011

Re: Tax Collector's Report to Commissioners – 03/16/11 Meeting

Please find outlined below collections information through March 3rd for the 2010 bills, which were mailed out on August 13th, as well as registered motor vehicle bills. As a point of reference, we also have included collections information as of the same date last year.

Annual Bills G01 Only:

2010 Total Charge \$57,524,414.37
Payments & Releases: 54,838,895.99
Unpaid Taxes: 2,685,518.38
Percentage Collected: 95.33%
(through 03/03/11)

2009 Total Charge: \$57,024,352.18
Payments & Releases: 54,279,340.62
Unpaid Taxes: 2,745,011.56
Percentage Collected: 95.19%
(through 03/03/10)

Motor Vehicle Bills G01 Only:

2010 Total Charge: \$3,126,976.94
Payments & Releases: 2,433,651.13
Unpaid Taxes: 693,325.81
Percentage Collected: 77.83%
(through 03/03/11)

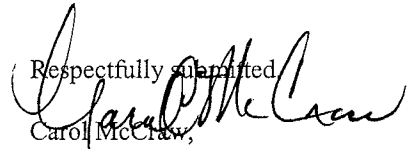
2009 Total Charge: \$3,232,646.23
Payments & Releases: 2,533,153.66
Unpaid Taxes: 699,492.57
Percentage Collected: 78.36%
(through 03/03/10)

Fire Districts All Bills

2010 Total Charge: \$6,624,360.93
Payments & Releases: 6,247,809.30
Unpaid Taxes: 376,551.63
Percentage Collected: 94.52%
(through 03/03/11)

2009 Total Charge: \$6,511,585.30
Payments & Releases: 6,134,564.88
Unpaid Taxes: 377,020.42
Percentage Collected: 94.42%
(through 03/03/10)

Respectfully submitted,


Carol McClaw,
Deputy Tax Collector

Stan C. Duncan,
Tax Collector

HENDERSON COUNTY BOARD OF COMMISSIONERS

1 Historic Courthouse Square, Suite 1
Hendersonville, North Carolina 28792
Phone 828-697-4808 • Fax: 828-692-9855

J. MICHAEL EDNEY
Chairman
THOMAS H. THOMPSON
Vice-Chairman

TDD: 828-697-4580
www.hendersoncountync.org

CHARLIE MESSER
BILL O'CONNOR
LARRY YOUNG

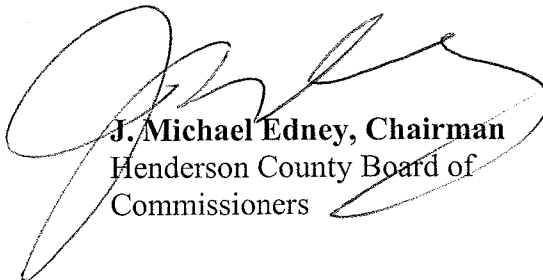
March 16, 2011

Mr. Stan Duncan, Tax Assessor
HENDERSON COUNTY ASSESSOR'S OFFICE
200 N. Grove Street, Suite 102
Hendersonville, N. C. 28792

Dear Mr. Duncan:

Attached please find the list of tax release requests (5) and tax refund requests (24) approved at the Henderson County Board of Commissioners' Meeting on Wednesday, March 16, 2011.

Sincerely,



J. Michael Edney, Chairman
Henderson County Board of
Commissioners

JME/tlw

enclosures

0002546272-2010-2010-000000 FULL REBATE
 RELEASE REFUND: PROPERTY OWNER WAS ALSO BILLED UNDER PARCEL NUMBER 1009111

Rebate #	Rate Type	Jurisdiction	Rebated Tax	Rebated Late List	Rebated Billed Interest	Total
90357	CNTY	COUNTY	244.40	0.00	0.00	\$ 244.40
0002546272-2010-2010-000000	FULL REBATE					\$ 244.40
REBATED IN FULL FOR 2010. PROPERTY OWNER PAID UNDER PARCEL NUMBER 1009111						
90359	CNTY	COUNTY	244.40	0.00	0.00	\$ 244.40
Grand Total:						\$ 488.80

REQUEST FOR BOARD ACTION

HENDERSON COUNTY BOARD OF COMMISSIONERS

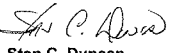
MEETING DATE: March 16, 2011
 SUBJECT: Tax Refunds
 PRESENTER: Assessor
 ATTACHMENTS: Refund Report

SUMMARY OF REQUEST:

The enclosed refund requests (5) have been reviewed by the County Assessor and as a result of that review, it is the opinion of the Assessor that these findings are in order. The supporting documentation is on file in the County Assessor's Office.

These refund requests are submitted for the approval by the Henderson County Board of Commissioners.

Type	Number of Items:	Revenue Amount:
Refunds	5	\$ 715.72

Faithfully Submitted,

 Stan C. Duncan
 County Assessor

BOARD ACTION REQUEST: Consent Approval Requested

Suggested Motion: "I move the Board approve the Tax Refund Report as presented."

REQUEST FOR BOARD ACTION

HENDERSON COUNTY BOARD OF COMMISSIONERS


MEETING DATE: March 16, 2011
 SUBJECT: Tax Releases
 PRESENTER: Assessor
 ATTACHMENTS: Release Report

SUMMARY OF REQUEST:

The enclosed release requests (24) have been reviewed by the County Assessor and as a result of that review, it is the opinion of the Assessor that these findings are in order. The supporting documentation is on file in the County Assessor's Office.

These release requests are submitted for the approval by the Henderson County Board of Commissioners.

Type	Number of Items:	Revenue Amount:
Releases	24	\$ 3,173.37

Faithfully Submitted,

 Stan C. Duncan
 County Assessor

BOARD ACTION REQUESTED: Consent Approval Requested.

Suggested Motion: "I move the Board approve the Tax Release Report as presented."

000046238-2007-2007-000000 FULL REBATE
 RELEASE/REFUND 2007 THROUGH 2010 ON PERSONAL PROPERTY MANUFACTURED HOME, DOUBLE BILLED, HOME CLASSIFIED AS REAL PROPERTY AND BILLED ON PARCEL 1009430 FOR SAME YEARS. OBL 2/7/2011

Rebate #	Rate Type	Jurisdiction	Rebated Tax	Rebated Late List	Rebated Billed Interest	Total
90350	CNTY	COUNTY	60.05	0.00	0.00	\$ 60.05
90350	FIRE	ETOWAH-HORSESHOE	10.40	0.00	0.00	\$ 10.40
Bill Total:						\$ 70.46
000046238-2008-2008-000000	FULL REBATE					
RELEASE/REFUND 2007 THROUGH 2010 ON PERSONAL PROPERTY MANUFACTURED HOME, DOUBLE BILLED, HOME CLASSIFIED AS REAL PROPERTY AND BILLED ON PARCEL 1009430 FOR SAME YEARS. OBL 2/7/2011						
90351	FIRE	ETOWAH-HORSESHOE	11.05	0.00	0.00	\$ 11.05
90351	CNTY	COUNTY	60.06	8.01	0.00	\$ 68.07
Bill Total:						\$ 79.23
000046238-2009-2009-000000	FULL REBATE					
RELEASE/REFUND 2007 THROUGH 2010 ON PERSONAL PROPERTY MANUFACTURED HOME, DOUBLE BILLED, HOME CLASSIFIED AS REAL PROPERTY AND BILLED ON PARCEL 1009430 FOR SAME YEARS. OBL 2/7/2011						
90352	CNTY	COUNTY	60.06	6.01	0.00	\$ 66.07
90352	FIRE	ETOWAH-HORSESHOE	11.05	1.11	0.00	\$ 12.16
Bill Total:						\$ 78.23
Grand Total:						\$ 228.92

Number of Bills = 5
 Total Amount = \$715.72

RELEASES

GARREN, KENISATA

000032129-2006-2006-000000 FULL REBATE
TAXPAYER DECEASED APRIL 21ST, 1999. PER AERIAL DATED APRIL 1992 MANUFACTURED HOME GONE. LOCATION UNKNOWN.

Rebate #	Rate Type	Jurisdiction	Rebated Tax	Rebated Late List	Rebated Bill Interest	Total
90960	CNTY	COUNTY	14.01	0.00	0.00	\$14.01
90960	FIRE	BLUE RIDGE	2.80	0.00	0.00	\$2.80
Bill Total:						\$16.81

000032129-2006-2006-000000 FULL REBATE
TAXPAYER DECEASED APRIL 21ST, 1999. PER AERIAL DATED APRIL 1992 MANUFACTURED HOME GONE. LOCATION UNKNOWN.

Rebate #	Rate Type	Jurisdiction	Rebated Tax	Rebated Late List	Rebated Bill Interest	Total
90959	CNTY	COUNTY	15.19	1.52	0.00	\$16.71
90959	FIRE	BLUE RIDGE	2.80	0.28	0.00	\$3.08
Bill Total:						\$19.79

000032129-2006-2006-000000 FULL REBATE
TAXPAYER DECEASED APRIL 21ST, 1999. PER AERIAL DATED APRIL 1992 MANUFACTURED HOME GONE. LOCATION UNKNOWN.

Rebate #	Rate Type	Jurisdiction	Rebated Tax	Rebated Late List	Rebated Bill Interest	Total
90958	CNTY	COUNTY	18.97	0.29	0.00	\$19.26
90958	FIRE	BLUE RIDGE	18.97	1.67	0.00	\$18.94
Bill Total:						\$21.44

000032122-2003-2003-000000 FULL REBATE
RELEASING BILLS FOR MANUFACTURED HOME FOR 1993-1996 AND 1998-2006. TAXPAYER DECEASED APRIL 21ST, 1999. PER AERIAL DATED APRIL 1992 MANUFACTURED HOME GONE. LOCATION UNKNOWN.

Rebate #	Rate Type	Jurisdiction	Rebated Tax	Rebated Late List	Rebated Bill Interest	Total
90982	CNTY	COUNTY	14.01	0.00	0.00	\$14.01
90982	FIRE	BLUE RIDGE	2.36	0.00	0.00	\$2.36
Bill Total:						\$16.37

000032121-2002-2002-000000 FULL REBATE
RELEASING BILLS FOR MANUFACTURED HOME FOR 1993-1996 AND 1998-2006. TAXPAYER DECEASED APRIL 21ST, 1999. PER AERIAL DATED APRIL 1992 MANUFACTURED HOME GONE. LOCATION UNKNOWN.

Rebate #	Rate Type	Jurisdiction	Rebated Tax	Rebated Late List	Rebated Bill Interest	Total
90964	CNTY	COUNTY	14.75	0.00	0.00	\$14.75
90964	FIRE	BLUE RIDGE	2.66	0.00	0.00	\$2.66
Bill Total:						\$17.41

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RELEASES

BREWERY, KENI RUSSELL

000232335-2006-2006-000000 FULL REBATE
WILD LIFE ABSTRACT# 000232335-2006-2006 2/17/11 2003 BRIG F400 WATERCRAFT, MOVED AND REGISTERED IN WASHINGTON STATE 7/12/05. WASHINGTON REGISTRATION ON FILE. BILL RELEASED.

Rebate #	Rate Type	Jurisdiction	Rebated Tax	Rebated Late List	Rebated Bill Interest	Total
90953	CNTY	COUNTY	37.57	3.76	0.00	\$41.33
90953	FIRE	EDNEYVILLE	6.32	0.63	0.00	\$6.95
Bill Total:						\$48.28

000232335-2007-2007-000000 FULL REBATE
WILD LIFE ABSTRACT# 000232335-2007 2/17/11 2003 BRIG F400 WATERCRAFT, MOVED AND REGISTERED IN WASHINGTON STATE 7/12/05. WASHINGTON REGISTRATION ON FILE. BILL RELEASED.

Rebate #	Rate Type	Jurisdiction	Rebated Tax	Rebated Late List	Rebated Bill Interest	Total
90955	CNTY	COUNTY	16.72	1.67	0.00	\$18.39
90955	FIRE	EDNEYVILLE	3.08	0.31	0.00	\$3.39
Bill Total:						\$21.78

000232335-2010-2010-000000 FULL REBATE
WILD LIFE ABSTRACT# 000232335-2010-2010 2/17/11 2003 BRIG F400 WATERCRAFT, MOVED AND REGISTERED IN WASHINGTON STATE 7/12/05. WASHINGTON REGISTRATION ON FILE. BILL RELEASED.

Rebate #	Rate Type	Jurisdiction	Rebated Tax	Rebated Late List	Rebated Bill Interest	Total
90956	CNTY	COUNTY	16.17	1.62	0.00	\$17.79
90956	FIRE	EDNEYVILLE	2.98	0.30	0.00	\$3.28
Bill Total:						\$21.07
Grand Total:						\$81.13

BRITAIN, BRUNDA

0000743283-2010-2010-000000 FULL REBATE
0000743283-2010-2010 BILLED INCORRECT OWNER-VERIFIED IN STARS-FULL REBATE-2/10/11

Rebate #	Rate Type	Jurisdiction	Rebated Tax	Rebated Late List	Rebated Bill Interest	Total
90430	CNTY	COUNTY	10.16	1.02	0.00	\$11.18
90430	FIRE	VALEY HILL	1.54	0.15	0.00	\$1.69
Bill Total:						\$12.87
Grand Total:						\$12.87

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RELEASES

000032127-1996-1996-000000 FULL REBATE
RELEASING BILLS FOR MANUFACTURED HOME FOR 1993-1996 AND 1998-2006. TAXPAYER DECEASED APRIL 21ST, 1999. PER AERIAL DATED APRIL 1992 MANUFACTURED HOME GONE. LOCATION UNKNOWN.

Rebate #	Rate Type	Jurisdiction	Rebated Tax	Rebated Late List	Rebated Bill Interest	Total
90672	FIRE	BLUE RIDGE	2.46	0.00	0.00	\$2.46
90672	CNTY	COUNTY	17.82	0.00	0.00	\$17.82
Bill Total:						\$20.28

000032122-1994-1994-000000 FULL REBATE
RELEASING BILLS FOR MANUFACTURED HOME FOR 1993-1996 AND 1998-2006. TAXPAYER DECEASED APRIL 21ST, 1999. PER AERIAL DATED APRIL 1992 MANUFACTURED HOME GONE. LOCATION UNKNOWN.

Rebate #	Rate Type	Jurisdiction	Rebated Tax	Rebated Late List	Rebated Bill Interest	Total
90674	FIRE	BLUE RIDGE	3.20	0.00	0.00	\$3.20
90674	CNTY	COUNTY	24.68	0.00	0.00	\$24.68
Bill Total:						\$27.88

000032122-1993-1993-000000 FULL REBATE
RELEASING BILLS FOR MANUFACTURED HOME FOR 1993-1996 AND 1998-2006. TAXPAYER DECEASED APRIL 21ST, 1999. PER AERIAL DATED APRIL 1992 MANUFACTURED HOME GONE. LOCATION UNKNOWN.

Rebate #	Rate Type	Jurisdiction	Rebated Tax	Rebated Late List	Rebated Bill Interest	Total
90675	CNTY	COUNTY	25.11	0.00	0.00	\$25.11
90675	FIRE	BLUE RIDGE	3.26	0.00	0.00	\$3.26
Bill Total:						\$28.37
Grand Total:						\$28.37

000032122-2000-2000-000000 FULL REBATE
RELEASING BILLS FOR MANUFACTURED HOME FOR 1993-1996 AND 1998-2006. TAXPAYER DECEASED APRIL 21ST, 1999. PER AERIAL DATED APRIL 1992 MANUFACTURED HOME GONE. LOCATION UNKNOWN.

Rebate #	Rate Type	Jurisdiction	Rebated Tax	Rebated Late List	Rebated Bill Interest	Total
90665	CNTY	COUNTY	14.75	0.00	0.00	\$14.75
90665	FIRE	BLUE RIDGE	2.66	0.00	0.00	\$2.66
Bill Total:						\$17.41

4

RELEASES

000032122-2001-2001-000000 FULL REBATE
RELEASING BILLS FOR MANUFACTURED HOME FOR 1993-1996 AND 1998-2006. TAXPAYER DECEASED APRIL 21ST, 1999. PER AERIAL DATED APRIL 1992 MANUFACTURED HOME GONE. LOCATION UNKNOWN.

Rebate #	Rate Type	Jurisdiction	Rebated Tax	Rebated Late List	Rebated Bill Interest	Total
90665	CNTY	COUNTY	14.75	0.00	0.00	\$14.75
90665	FIRE	BLUE RIDGE	2.66	0.00	0.00	\$2.66
Bill Total:						\$17.41

000032122-2000-2000-000000 FULL REBATE
RELEASING BILLS FOR MANUFACTURED HOME FOR 1993-1996 AND 1998-2006. TAXPAYER DECEASED APRIL 21ST, 1999. PER AERIAL DATED APRIL 1992 MANUFACTURED HOME GONE. LOCATION UNKNOWN.

Rebate #	Rate Type	Jurisdiction	Rebated Tax	Rebated Late List	Rebated Bill Interest	Total
90667	FIRE	BLUE RIDGE	2.89	0.00	0.00	\$2.89
90667	CNTY	COUNTY	16.05	0.00	0.00	\$16.05
Bill Total:						\$18.94

000032122-1998-1998-000000 FULL REBATE
RELEASING BILLS FOR MANUFACTURED HOME FOR 1993-1996 AND 1998-2006. TAXPAYER DECEASED APRIL 21ST, 1999. PER AERIAL DATED APRIL 1992 MANUFACTURED HOME GONE. LOCATION UNKNOWN.

Rebate #	Rate Type	Jurisdiction	Rebated Tax	Rebated Late List	Rebated Bill Interest	Total
90668	CNTY	COUNTY	17.45	0.00	0.00	\$17.45
90668	FIRE	BLUE RIDGE	2.79	0.00	0.00	\$2.79
Bill Total:						\$20.24

000032122-1998-1998-000000 FULL REBATE
RELEASING BILLS FOR MANUFACTURED HOME FOR 1993-1996 AND 1998-2006. TAXPAYER DECEASED APRIL 21ST, 1999. PER AERIAL DATED APRIL 1992 MANUFACTURED HOME GONE. LOCATION UNKNOWN.

Rebate #	Rate Type	Jurisdiction	Rebated Tax	Rebated Late List	Rebated Bill Interest	Total
90669	CNTY	COUNTY	3.14	0.00	0.00	\$3.14
90669	FIRE	BLUE RIDGE	20.42	0.00	0.00	\$20.42
Bill Total:						\$23.56

000032122-1996-1996-000000 FULL REBATE
RELEASING BILLS FOR MANUFACTURED HOME FOR 1993-1996 AND 1998-2006. TAXPAYER DECEASED APRIL 21ST, 1999. PER AERIAL DATED APRIL 1992 MANUFACTURED HOME GONE. LOCATION UNKNOWN.

Rebate #	Rate Type	Jurisdiction	Rebated Tax	Rebated Late List	Rebated Bill Interest	Total
90671	CNTY	COUNTY	17.87	0.00	0.00	\$17.87
90671	FIRE	BLUE RIDGE	3.14	0.00	0.00	\$3.14
Bill Total:						\$21.01

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RELEASES

LAUGHTER, JERRY & FULL REBATE
 0002384173-2010-2010-000000
 RELEASE 2010 BILL ON PERSONAL PROPERTY MANUFACTURED HOME, DOUBLE WIDE MOVED TO POLK COUNTY IN 2009.
 RECEIPT ON FILE. CALLED AND VERIFIED WITH POLK COUNTY. CAL 2/9/2011

Rebate #	Rate Type	Jurisdiction	Rebated Tax	Rebated Late List	Rebated Billed Interest	Total
90419	FIRE	EDNEYVILLE	38.53	0.00	0.00	\$ 38.53
90419	CNTY	COUNTY	214.83	0.00	0.00	\$ 214.83
						Bill Total: \$ 254.38
						Grand Total: \$ 254.38

FOLE, BERNARD & FULL REBATE
 000277120-2010-2010-000000
 RELEASE REFUND 2007 THROUGH 2010 ON PERSONAL PROPERTY MANUFACTURED HOME, DOUBLE BILLED, HOME
 CLASSIFIED AS REAL PROPERTY AND BILLED ON PARCEL 1009450 FOR SAME YEARS. CAL 2/7/2011

Rebate #	Rate Type	Jurisdiction	Rebated Tax	Rebated Late List	Rebated Billed Interest	Total
90353	CNTY	COUNTY	57.29	5.73	0.00	\$ 63.02
90353	FIRE	ETOWAH-HORSESHOE	10.54	1.05	0.00	\$ 11.59
						Bill Total: \$ 74.61
						Grand Total: \$ 74.61

Number of Bills = 24
 Total Amount = \$31,728.37

RELEASES

GLADE RESIDENTIAL LLC & FULL REBATE
 0002546084-2009-2009-000000
 VALUE DECREASE
 PARCEL WAS VALUED AS 24.62 ACRES. SHOULD HAVE BEEN SITE VALUES AS 1 LOT OR .40 ACRES FOR 2007-2010. ACREAGE
 WAS BILLED AS LOTS ON PARCELS 1006191-1006233 FOR 2007-2010

Rebate #	Rate Type	Jurisdiction	Rebated Tax	Rebated Late List	Rebated Billed Interest	Total
88972	FIRE	FLETCHER	153.14	0.00	0.00	\$ 153.14
88972	CNTY	COUNTY	744.74	0.00	0.00	\$ 744.74
						Bill Total: \$ 897.88
						Grand Total: \$ 897.88

0002546084-2010-2010-000000
 VALUE DECREASE
 PARCEL WAS VALUED AS 24.62 ACRES. SHOULD HAVE BEEN SITE VALUES AS 1 LOT OR .40 ACRES FOR 2007-2010. ACREAGE
 WAS BILLED AS LOTS ON PARCELS 1006191-1006233 FOR 2007-2010

Rebate #	Rate Type	Jurisdiction	Rebated Tax	Rebated Late List	Rebated Billed Interest	Total
88973	FIRE	FLETCHER	153.14	0.00	0.00	\$ 153.14
88973	CNTY	COUNTY	744.74	0.00	0.00	\$ 744.74
						Bill Total: \$ 897.88
						Grand Total: \$ 897.88

000277120-2010-2010-000000
 FULL REBATE
 INDIVIDUAL ASST/FR 000277120 2/19/11 1997 COUNTRY COACH RV, BILLED AND PAID BY DENISE JONES FROM
 LONGER RESIDENTS 2010 LISTED BY DENISE JONES ON LAKEWOOD REPORT, BLANCHARD JONES ON IND.
 LAKEWOOD RV PARK REPORT: IND BILLED TO BLANCHARD JONES, IDENTICAL VIN NUMBERS ON FILE

Rebate #	Rate Type	Jurisdiction	Rebated Tax	Rebated Late List	Rebated Billed Interest	Total
90956	FIRE	BLUE RIDGE	201.76	0.00	0.00	\$ 201.76
90956	CNTY	BLUE RIDGE	37.12	0.00	0.00	\$ 37.12
						Bill Total: \$ 238.88
						Grand Total: \$ 238.88

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**State of North Carolina
Department of the Secretary of State**

**ARTICLES OF AMENDMENT
NONPROFIT CORPORATION**

Pursuant to §55A-10-05 of the General Statutes of North Carolina, the undersigned corporation hereby submits the following Articles of Amendment for the purpose of amending its Articles of Incorporation.

1. The name of the corporation is: Henderson County Hospital Corporation.

2. The text of each amendment adopted is as follows (*state below or attach*):
See attached, which is incorporated herein by reference.

3. The date of adoption of each amendment was as follows: _____
16 March 2011.

4. (*Check a, b, and/or c, as applicable*)
a. _____ The amendment(s) was (were) approved by a sufficient vote of the board of directors or incorporators, and member approval was not required because (*set forth a brief explanation of why member approval was not required*) _____

b. The amendment(s) was (were) approved by the members as required by Chapter 55A.

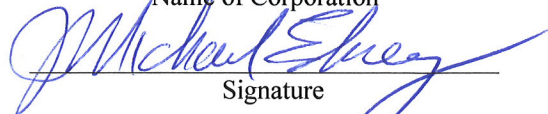
c. _____ Approval of the amendment(s) by some person or persons other than the members, the board, or the incorporators was required pursuant to N.C.G.S. §55A-10-30, and such approval was obtained.

5. These articles will be effective upon filing, unless a date and/or time is specified: 16 March 2011

This the 16th day of March, 2011

HYenderson County Hospital Corporation

Name of Corporation



Signature

J. Michael Edney, Chair of Board of Commissioners (sole member)

Type or Print Name and Title

Notes:

1. Filing fee is \$25. This document and one exact or conformed copy of these articles must be filed with the Secretary of State.

AMENDMENT

The Articles of Incorporation of HENDERSON COUNTY HOSPITAL CORPORATION are amended by adding two new sub-Article, (1a) and (1b) to appear immediately prior to sub-Article (a) of Article VIII, to read as follows:

(1a) enter into any joint venture, partnership, joint ownership arrangement, contractual agreement, or other arrangement or transaction, however denominated (such venture, partnership, joint ownership arrangement, agreement or other arrangement or transaction referred to here as a "joint venture"), involving joint use, ownership or operation of any medical or allied health facility not constructed and in operation as of 1 July 2010 without first obtaining the approval of the Board of Commissioners of Henderson County for such joint venture, such approval to be demonstrated by majority vote of the Commissioners at a public meeting of their Board.

(1b) employ or enter into any contract to employ any person or entity as or acting in the role of chief executive officer (no matter how denominated) of the Corporation (not including any such contract in existence as of 1 February 2011) with first obtaining the approval of the Board of Commissioners of Henderson County for the same, such approval to be demonstrated by majority vote of the Commissioners at a public meeting of their Board.

The remainder of the Articles, as previously modified, are unaffected by this Amendment.

STATE OF NORTH CAROLINA)
)
 COUNTY OF HENDERSON) **SERVICES AGREEMENT**
)
) **Recyclable Materials**
) **Processing and Marketing**

THIS AGREEMENT (“Agreement” or “Contract”) is made and entered into this 16th day of March, 2011, by and between Henderson County, North Carolina, a duly organized political subdivision of the State of North Carolina (the “County”) and American Recycling of South Carolina, LLC, a Georgia limited liability company that is authorized to transact business in the State of North Carolina (the or “Contractor”) (collectively the “Parties”).

WITNESSETH

WHEREAS, the County has a comprehensive recycling program and desires to substantially expand its recycling program volumes; and

WHEREAS, the County desires a recycling materials processor to operate a materials recycling facility in Henderson County and to process and market all of the County’s recyclable materials; and

WHEREAS, the Contractor has reviewed the services required pursuant to this Agreement and is qualified, willing and able to provide recyclables processing services to County and perform all such services in accordance with its terms and conditions as well as process and market recyclable materials for other customers at such recycling facility; and

WHEREAS, the County desires to contract with the Contractor on such terms and conditions as are set forth herein.

NOW, THEREFORE, in consideration of these premises and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereto, each intending to be legally bound, agree as follows:

ARTICLE 1. DEFINITIONS

As used herein, the following terms shall have the meanings set forth below:

- 1.1 **“Agreement”** – This Agreement between the County and the Contractor, including the Schedules and any written amendments to either as modified, supplemented or restated from time to time.
- 1.2 **“Blue Bags”** – Program Recyclables that are collected in plastic bags.
- 1.3 **“Commencement Date”** – Except as otherwise provided for herein, the Commencement Date is the date on which the Contractor commences to accept, process, and market Recyclable Materials in accordance with this Agreement, but in no event is later than _____, 2011.

- 1.4 **“Commercial Program Recyclables”** – Recyclable Materials from commercial, institutional, and industrial establishments in Henderson County that the County delivers, or causes to be delivered, to the MRF or the Transfer Station.
- 1.5 **“Commercial Fiber”** – Recyclable paper and board products designated by the County for recycling collection programs, including but not limited to office paper, cardboard, newspaper, magazines, junk mail and paperboard packaging from commercial, institutional, and industrial establishments in Henderson County that the County delivers, or causes to be delivered, to the MRF or the Transfer Station.
- 1.6 **“Commingled Containers”** – Plastic, metal, and glass containers that are mixed together for collection and delivery to the MRF or the Transfer Station.
- 1.7 **“Commission”** – The County Board of Commissioners of Henderson County, North Carolina which is the governing body of the County.
- 1.8 **“Contract Officer”** – The individual designated in writing by the County to represent it in all matters relating to the interpretation, implementation or enforcement of the Contract.
- 1.9 **“Contract Year”** – Beginning on the Commencement Date and ending June 30, 2011 and every twelve (12) months thereafter (July 1-June 30) for the term of the Agreement.
- 1.10 **“Contractor”** – American Recycling of South Carolina, LLC, with whom the County has entered into this Agreement.
- 1.11 **“County”** – Henderson County, a body corporate and politic of the State of North Carolina.
- 1.12 **“Department”** – The Henderson County Department of Engineering Services.
- 1.13 **“Director”** – The Director of the Henderson County Engineering Services Department or any other agency, as may be designated by the County to administer this Agreement.
- 1.14 **“Dual Stream”** – A method of collecting and processing Recyclable Materials in two streams in which Commingled Containers (one stream) are collected separately from commingled paper and/or fiber products (the other stream).
- 1.15 **“Effective Date”** – The date upon which this Agreement is fully executed by both Parties. The later signature date shall be the Effective Date.
- 1.16 **“Environmental Laws”** – All applicable federal, state, county or local laws, directives, rules, ordinances, codes, guidelines, regulations, governmental, administrative or judicial orders or decrees or other legal requirements of any kind, including, without limitation, common law, whether currently in existence or hereafter promulgated, enacted, adopted

or amended, relating to safety, preservation or protection of human health and the environment (including, without limitation, ambient air, surface water, groundwater, land, or subsurface strata) and/or relating to the handling, treatment, transportation or disposal of waste, substances or materials, including, without limitation, any matters related to Releases and threatened Releases of materials and substances.

- 1.17 “Fees and Taxes”** – Any federal, state, local or other taxes, assessments, fees, surcharges or similar charges directly or indirectly related to the services provided by the Contractor pursuant to this Agreement which are imposed on either the County or Contractor, and are with respect to the operations of the MRF by law, ordinance, rule, order or regulation and/or agreement with a governmental authority, whether existing as of the Effective Date or as implemented or modified thereafter and whether imposed retroactively or prospectively.
- 1.18 “Force Majeure”** – Any event relied upon by the Contractor or the County, as applicable, as justification for delay in or excuse from complying with any obligation required of the Contractor or the County, as applicable, under this Agreement, including, without limitation: (i) an act of God, landslide, lightning, earthquake, hurricane, fire, explosion, storm, flood or similar occurrence; (ii) any act of any federal, state, county, or local court, administrative agency or governmental office or body that stays, invalidates, or otherwise affects this Agreement or any permits or licenses of the MRF or the Transfer Station with respect to the acceptance and/or processing and/or general availability to consumers of Recyclable Materials; (iii) the denial, loss, suspension, expiration, termination, or failure of renewal of any permit, license or other governmental approval required to accept and/or process Recyclable Materials at the MRF or the Transfer Station; (iv) the adoption or change (including a change in interpretation or enforcement) of any federal, state, county, or local law, rule, permit, regulation or ordinance after the date of this Agreement, applicable to the obligations of the Contractor or the County, as applicable, under this Agreement; or (v) the institution of a legal or administrative action, or similar proceeding, by any person or entity which delays or prevents any aspect of the acceptance and/or processing of Recyclable Materials at the MRF or the Transfer Station.
- 1.19 “Hazardous/Biohazardous Waste”** – Medical sharps and all materials or substances defined or characterized as hazardous or biohazardous waste by the United States Environmental Protection Agency, the North Carolina Department of Environmental and Natural Resources (“NC DENR”), the Occupational Safety and Health Administration (OSHA) or any other agency pursuant to any Environmental Law and all current and future amendments thereto and all regulations promulgated thereunder.
- 1.20 “Materials Recovery Facility” or “MRF”** – The Recyclable Materials processing facility located on the Site.
- 1.21 “Non-Recyclable Materials”** – All materials that do not constitute Recyclable Materials.

- 1.22 “Program”** – The Henderson County Recycling Program as it may, from time to time, be defined by the County, which initially shall include residential recycling activities and potentially may include commercial recycling activities.
- 1.23 “Program Materials”** - All materials, both Recyclable Materials and Non-Recyclable Materials that the County delivers, or causes to be delivered, to the MRF or the Transfer Station.
- 1.24 “Program Recyclables”** – Recyclable Materials from the Program that the County delivers, or causes to be delivered, to the MRF or the Transfer Station.
- 1.25 “Recovered Materials”** – Recyclable Materials that have been processed to market specifications.
- 1.26 “Recyclable Materials”** – Various recyclable products and packaging originating in the County, including various types of paper (including but not limited to newspaper, junk mail, magazines, office paper, cardboard and paperboard packaging) and containers (including but not limited to glass bottles and jars, aluminum and steel cans, and #1 - #7 plastics). Recyclable Materials includes incidental amounts of Rejects and non-designated materials as can be normally expected as part of municipal recycling collection. The list of Recyclable Materials may be expanded or contracted from time to time as determined jointly by the County and the Contractor.
- 1.27 “Rejects”** – Materials other than Residue that cannot be processed into Recovered Materials.
- 1.28 “Residential Program Recyclables”** – Recyclable Materials from single-family and multi-family dwelling units in Henderson County that the County delivers, or causes to be delivered, to the MRF or the Transfer Station.
- 1.29 “Residue”** – That portion of the Recyclable Materials other than Rejects accepted by the Contractor that are not converted to Recovered Materials.
- 1.30 “Shutdown”** – Failure of the Contractor to accept all Recyclable Materials after the Commencement Date for any reason except Force Majeure.
- 1.31 “Site”** – The parcel of land *[To Be Selected Prior To Commencement Date]*.
- 1.32 “Single Stream”** – A method of collecting and processing Recyclable Materials whereby all Recyclable Materials are collected and delivered to the MRF or the Transfer Station mixed together.
- 1.33 “Third Party Hauler”** – A waste management and/or recycling transporter operating in the County under permit from the County which allows such transporter to deliver Recyclable Materials directly to the MRF.

- 1.34 **“Ton”** – A unit of weight equal to 2,000 pounds, also referred to as a “short ton.”
- 1.35 **“Transfer Station”** – The County owned waste management station facility located at 802 Stoney Mountain Rd., Hendersonville, North Carolina 28791.
- 1.36 **“Unwanted Waste”** – Non-Recyclable Materials that Contractor deems in its sole discretion to be undesirable to sort as part of the processing of Program Recyclables, including but not limited to Non-Recyclable Materials that are likely to cause contamination to potentially Recyclable Materials.

ARTICLE 2. TERM OF AGREEMENT

- 2.1 **Effective Date.** Except as otherwise provided for herein, the obligations of the Parties shall take effect on approval by the Board of Commissioners of the County.
- 2.2 **Term.** Unless terminated earlier as set forth herein this Agreement, the initial term of this Agreement shall remain in effect for ten (10) years from July 1, 2011 (the **“Initial Term”**). Thereafter, the Agreement will automatically renew for two additional and successive five (5) year terms (each a **“Renewal Term”**) unless (i) either party gives written notice to the other party ninety (90) days prior to the expiration of the Initial Term that the Agreement will terminate on the expiration of the Initial Term; or (ii) either party gives written notice to the other party ninety (90) days prior to the expiration of the first Renewal Term that the Agreement will terminate on the expiration of the first Renewal Term.

ARTICLE 3. CONTRACTOR’S RESPONSIBILITIES

Services of the Contractor. Subject to the terms of this Agreement, the Contractor shall be responsible for receiving and processing all of the Recyclable Material that the County delivers or causes to be delivered to the MRF or the Transfer Station, as well as the County Office Program Recyclables to be picked up by the Contractor (**the “Work”**).

3.1 Material Acceptance – Transfer Station.

- 3.1.1 **Acceptance of Program Recyclables – Transfer Station.** Beginning with the Commencement Date, the Contractor shall accept Program Recyclables at the Transfer Station and be responsible for delivery to the MRF. Notwithstanding the foregoing, Contractor’s obligation to accept Program Recyclables at the Transfers Stations shall only occur if and when (i) containers/trailers are loaded to visual capacity (each a **“Visual Capacity Load”**); (ii) each Visual Capacity Load is stowed in either open top roll off containers or walking floor trailers; and (iii) the County notifies the Contractor of a Visual Capacity Load (each load meeting the requirement of (i) – (iii) referred to as a **“Ready Load”**).

3.1.2 Transportation to MRF; Transportation Costs. The Contractor shall be solely responsible for transporting Ready Loads to the MRF and all costs associated with such transfers shall be absorbed by the Contractor.

3.2 Acceptance of Program Recyclables - MRF.

3.2.1 Acceptance of Program Recyclables – MRF. Beginning with the Commencement Date, the Contractor shall accept all Program Recyclables accumulated at the Transfer Station. Program Recyclable picked up by the Contractor may be Dual Stream, Single Stream or Single Stream with Blue Bags.

3.2.2 Method of Delivery. The Contractor shall accept County or Third Party Hauler delivered Program Recyclables from a variety of different trucks including, but not limited to, packer trucks, roll-off trucks, self-unloading road trailers, and rear-discharging and side-discharging tilt-bed collection vehicles.

3.2.3 Scale House Operations. The Contractor shall operate the truck scale and electronic weigh system to weigh and record all inbound loads. In the event the truck scale or electronic weigh system is found to be inaccurate or is otherwise in need of repair, the Contractor shall be responsible for weighing all County Program Material loads at HCSW's transfer station until Contractor's scale is repaired and certified for use.

3.2.4 Weigh Tickets. For each load of County Program Materials picked up at the Transfer Station, the Contractor shall provide the County with a ticket showing vehicle weight before and after unloading, or gross weight and tare weight and the total net weight of the material. (each a "Load Weigh Ticket").

3.2.5 Scheduled Receiving Hours. The MRF shall be open and available to receive Program Recyclables from at least 7:30 a.m. to 4:30 p.m. Monday through Friday to accommodate any third party haulers hauling Program Recyclables generated within the county.. The MRF may be closed on six holidays (New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving, and Christmas), but will be required to be open from 7:30 a.m. to 4:30 p.m. on the Saturday following the holiday (collectively the "Scheduled Receiving Hours"). No changes shall be made to these hours without the prior written approval of the Director.

The Contractor agrees to temporarily increase the Scheduled Receiving Hours to accommodate unusual quantities of County delivered Recyclable Materials resulting from unusual circumstances if both (a) the MRF is able, in the reasonable sole judgment of the Contractor to receive such additional quantities without adversely affecting the Contractor's operation or maintenance of the MRF; and (b) the County provides the Contractor with advance written notice to such delivery sufficient to enable the Contractor to respond to any such request.

- 3.3 Over 35% Loads.** Each load of County Program Materials containing thirty five percent (35%) or more of the total load in Non-Recyclable Materials by weight, as determined in the sole discretion of the Contractor (each an "**Over 35% Load**"), may be refused at Contractor's sole discretion. Any Over 35% Load that is accepted by the Contractor will be paid based on the received weight of Recyclable Materials. The Non-Recyclable Materials from an Over 35% Load will be weighed and shipped to the landfill. All disposal costs incurred by Contractor in connection with the disposal of Non-Recyclable Materials remaining after processing of an Over 35% Load will be the responsibility of the County and the Contractor will deduct all such incurred costs associated with such disposal from the amount owed to County under Section 6 below.
- 3.4 Downgrade Loads.** Each load of County Program Materials containing more than five percent (5%) but less than thirty five percent (35%) of the total load in Non-Recyclable Materials, as determined in the sole discretion of the Contractor (each a "**Downgrade Load**"), may also be refused at Contractor's sole discretion in the event that the Downgrade Load is due to either Hazardous/Biohazardous Waste or Unwanted Waste, or a combination of the two. Any Downgrade Load that is accepted by the Contractor will be paid based on the received weight of Recyclable Materials. The Non-Recyclable Materials from a Downgrade Load will be weighed and shipped to the landfill. All disposal costs incurred by Contractor in connection with the disposal of Non-Recyclable Materials remaining after processing of a Downgrade Load will be the responsibility of the County and the Contractor will deduct all such incurred costs associated with such disposal from the amount owed to County under Section 6 below.
- 3.5 Hazardous/Biohazardous Waste.** If any Hazardous/Biohazardous Waste is detected in Program Materials, the Contractor will attempt to properly isolate the waste and notify the Contract Officer. Mutually, the Contractor and Contract Officer will determine who will remove, pack and disposed of such Hazardous/Biohazardous Waste, but the County shall always be responsible for all costs associated with the removing, packing, and disposing of the Hazardous/Biohazardous Waste delivered by the County and the Contractor will deduct all such incurred costs associated with such disposal from the amount owed to County under Section 6 below.
- 3.6 Certified Scale and Electronic Weighing System.** The Contractor shall maintain all mechanical and electronic components of the MRF truck scale. The Contractor will ensure that the truck scale is tested, calibrated and certified in accordance with all

applicable requirements of the state North Carolina. The Contractor will operate the scale utilizing CieTrade, or a comparable and compatible, electronic weighing system that enables detailed tracking of all inbound loads of County delivered Program Materials, Recyclable Materials, Recovered Materials, Rejects and Residue.

3.7 Compliance with Laws and Regulations. In fulfilling its responsibilities under this Agreement the Contractor and County shall comply at all times with all applicable local, State and Federal laws, regulations, permits and similar requirements, including all applicable requirements concerning noise, odors, effluent and emissions.

3.8 Subcontracting. The Contractor may subcontract any or all of its duties or obligation under this Agreement with the prior written consent of the County, which consent may not be unreasonably withheld.

3.9 Public Relations.

3.9.1 MRF Tours. Contractor may make the MRF available for tours by governmental officials during Scheduled Receiving Hours. Unless otherwise mutually agreed, the County will give at least one (1) week notice to the Contractor of a tour. MRF tours will be at no cost to the County. Designated areas for tour-group participants to safely observe the operations of the MRF will be created by the Contractor and the County will take reasonable precautions to ensure tour group participants stay within such designated areas.

3.9.2 Promotional Events. The Contractor will participate in up to two (2) County promotional events annually, such as award events, Henderson Recycles Day, America Recycles Day, and special events.

3.10 County Office Services. The Contractor will continue to pick-up and deliver to the MRF those Program Recyclables located at offices owned by the County (the “**County Office Program Recyclables**”). The Contractor will receive no fee for such transportation and the County will receive no payment for such County Office Program Recyclables. Notwithstanding the foregoing the County Office Program Recyclables will count towards the Annual Tonnage Requirement described in Section 5.1.

ARTICLE 4. DELIVERY AND EXCLUSIVITY

The County shall cause all Recyclable Material collected by or on behalf of the County to be delivered to the MRF or Transfer Station. The County shall use reasonable efforts, in good faith, to cause only Recyclable Material to be delivered to the MRF or Transfer Station and to minimize quantities of County delivered Non-Recyclable Materials. During the Initial Term and any Renewal Term of the Agreement, the County will not enter into any new agreements with any other entity, whether written or oral, that provides services similar to those provided by Contractor as contemplated by this Agreement without Contractor’s written consent. Nothing in

this Agreement shall restrict Contractor in any manner from providing recycling material processing services for other potential customers.

ARTICLE 5. RESPONSIBILITIES OF THE COUNTY

5.1 Minimum Tonnage Requirements Guarantee. The County guarantees either (i) to personally deliver to the MRF or Transfer Station (which shall include County Office Program Materials under Section 3.11); or (ii) to cause a Third Party Hauler to deliver to the MRF, a minimum of 333.33 Tons of Recyclable Materials per each calendar month of each Contract Year (each month the “**Monthly Tonnage Requirement**”). Because the County has a July 1-June 30 fiscal year (the County’s “**Fiscal Year**”), the twelve calendar months between July 1-June 30 of each Fiscal Year shall be aggregated for the purpose of determining the Profit Sharing Payment set forth in Section 6.2.2 below. In the event the Commencement Date is a day other than the first day of a calendar month, the Monthly Tonnage Requirement for such stub period month will be adjusted downward on a pro-rata basis based on the percentage of days remaining in such Calendar Month.

5.2 Site Damage Caused by County. The County shall repair all Site damage, including any damage to buildings or structures or vehicles or other personal property of the Contractor, caused by its fault or negligence.

ARTICLE 6. PAYMENTS TO THE COUNTY

6.1 Monthly Minimum Payments. Each month, if and only if the Contractor earns the Monthly Minimum Payment (defined below) and meets the Monthly Minimum Tonnage, the Contractor shall pay revenue to the County equal to the total monthly tons of Dual Stream, Single Stream and Single Stream with Blue Bags delivered to either the MRF or the Transfer Station by the County multiplied by the Minimum Per Ton Revenue Formula in Table 2 below (the “**Monthly Minimum Payment**”). Material which exceeds 10% Blue Bag material will be classified as Single Stream with Blue Bags. The County acknowledges that the Monthly Tonnage Requirement is a material inducement for the Contractor to enter into this Agreement. Failure by the County to meet each Monthly Tonnage Requirement each calendar month of each Contract Year will result in material damages to Contractor. Therefore, in the event that the County fails to meet the Monthly Tonnage Requirement for a given month, the Monthly Minimum Payment will be deemed unearned, the Contractor will not make the Monthly Minimum Payment for such month, and the County waives any and all rights to such unearned Monthly Minimum Payment.

6.2 Annual Profit Sharing Payments

6.2.1 Average Annual Market Value Calculation. After each Contract Year the Contractor shall calculate the Average Annual Market Value index for the just ended Contract Year (“**AAMV**”) of Residential Program Recyclables defined as the 12-month average (shorter month

average for first stub year Contract Year) of (i) the monthly sum of commodity prices (U.S. Dollar per Ton) posted on the first day of each of the twelve months of the Contract Year in SecondaryMaterialsPricing.com and SecondaryFiberPricing.com (the “Original Pricing Sources”) multiplied by (ii) the composition of Recyclable Materials (see Table 1 below). In the event that either one or both of the Original Pricing Sources either (i) no longer exist; or (ii) no longer accurately reflect the County and Contractor’s intent for establishing pricing on the Effective Date; the County and Contractor agree to negotiate in good faith and establish a replacement pricing source(s) that is as comparable as possible to the Original Pricing Source(s).

6.2.2 End-of-Year Payment. After each Contract Year, upon the Contractor’s determination of the AAMV, the Contractor shall make a one-time annual profit sharing payment to County based on the AAMV equal to the total annual tons of Dual Stream, Single Stream and Single Stream with Blue Bags delivered to either the MRF or the Transfer Station by the County multiplied by the Per Ton Profit Sharing Formula in Table 3 (the “Profit Sharing Payment”). Material which exceeds 10% Blue Bag material will be classified as Single Stream with Blue Bags.

**Table 1
Composition of County Delivered Residential Program Recyclables and Market Indexes
for Determining Average Market Value**

MATERIAL	Percentage¹	Waste News Pricing Type²
Aluminum	1.79%	Aluminum Cans (sorted and baled)
Steel	2.65%	Steel Cans (sorted & densified)
HDPE Colored	2.38%	Colored HDPE (baled)
HDPE Natural	1.28%	Natural HDPE (baled)
PET	3.88%	PET (baled)
OCC	10.20%	PS 11 Corrugated Containers
Office Fiber	2.40%	PS 37 Sorted Office Paper
ONP	38.68%	PS 8 Special De-ink Quality News
Mixed Paper	7.00%	PS 1 Soft Mixed Paper
Mixed Plastics	0.44%	All containers 1-7s
Mixed Glass	24.80%	3 Sort Glass
Residuals	4.50%	
	100.00%	Average Monthly Market Value

**Table 2
Minimum Per Ton Revenue Formulas for Dual
Stream, Single Stream and Single Stream with Blue Bags Delivered By County.**

MATERIAL		GUARANTEED FLOOR PRICES
Dual Stream		\$20/ton
Single Stream		\$10/ton
Single Stream with Blue Bags		\$0/ton

Table 3
Per Ton Profit Sharing Formulas for Dual Stream, Single Stream and Single Stream with Blue Bags Delivered By County.

MATERIAL		FORMULA BASED ON THE AVE. ANNUAL MARKET VALUE
Dual Stream		AAMV - \$110.00/ton
Single Stream		AAMV - \$115.00/ton
Single Stream with Blue Bags		AAMV - \$125.00/ton

6.3 Timing and Method of Payment. Subject to setoff by Contractor for costs of County incurred by Contractor under Article 3 above, the Monthly Minimum Payment due under Section 6.1 shall be submitted to the County within thirty (30) calendar days from the end of the month for which the payment is being made. Additionally, within thirty (30) calendar days from the end of each Contract Year the Profit Sharing Payment shall be submitted to the County. Concurrently with the submission of the Profit Sharing Payment, the Contractor shall submit an annual report for the previous Contract Year detailing the calculation of the Profit Sharing Payment due under Section 6.2.

6.4 Adjustments to the Composition of Residential Program Recyclables. The Contractor or County may request a study to measure the composition of Residential Program Recyclables utilized to calculate the AAMV pursuant to Article 6 of this Agreement, such request being subject to approval by the County, and such approval not unreasonably withheld. If approved by the County, Contractor and Director shall jointly develop a methodology and cost estimate to conduct the composition study. The Parties shall share equally in paying for the cost of the study. Once approved, adjustments to the composition of Residential Program Recyclables shall become effective for the following month and remainder of the Term, or until further adjusted in accordance with this article.

6.5 Proration. If any payments, rights or obligations under this Agreement (whether relating to Fees and Taxes, insurance, or to any other provision of this Agreement) relate to a period in part before the Effective Date or in part after the date of expiration or termination of the Term, the Parties hereto agree that appropriate adjustments and prorations shall be made.

ARTICLE 7. RECORD KEEPING AND REPORTING

7.1 Recordkeeping. The Contractor shall create, maintain, and make available records as defined herein, and which may be required by applicable local, state, and federal laws, rules and regulations:

7.1.1 Recyclable Materials. The Contractor will record Recyclable Materials Tonnage by date, type and source.

7.1.2 Reject and Residue. The Contractor will record Reject and Residue Tonnage by date.

7.1.3 Other. The Contractor shall maintain other records, documents and reports as the County may reasonably require to verify compliance with the Agreement.

7.2 Document Retention. The Contractor shall maintain and allow access to books, records, data, documents, and reports relating to this Agreement for three (3) years following the conclusion or termination of this Agreement.

ARTICLE 8. TERMINATION

8.1 For Default. If either Party fails to comply with any of the terms and conditions of the Agreement deemed to be material, such refusal or failure shall be deemed a default under this Agreement.

In the event of default, the non-defaulting Party may give written notice of the default to the defaulting Party. The defaulting Party shall have thirty (30) days from the receipt of the notice to cure any default. If the defaulting Party fails to cure the breach within the allotted time, the non-defaulting Party may, at its option, immediately terminate the Agreement by providing written notice of termination to the defaulting Party. In the event of a default, the Contractor shall be entitled to compensation from third party vendors for materials processed, marketed and sold under this Agreement.

8.2 Rights Cumulative. The rights and remedies of the County and Contractor provided in this Article are in addition to any other rights and remedies provided by law or under this Agreement.

ARTICLE 9. REPRESENTATIONS AND WARRANTIES.

9.1 Contractor. The Contractor represents and warrants as follows:

9.1.1 The Contractor is a limited liability company duly organized, validly existing and in good standing under the laws of the State of Georgia and is authorized to do business in North Carolina.

9.1.2 This Agreement has been duly executed and delivered by the Contractor and constitutes a legal, valid and binding obligation of the Contractor,

enforceable against the Contractor in accordance with its terms, except as the same may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or similar laws affecting the enforcement of creditors' rights generally and general equitable principles regardless of whether such enforceability is considered in a proceeding at law or in equity.

9.1.3 The Contractor has the corporate power and authority to execute and deliver this Agreement and to perform its obligations hereunder. The Contractor has taken all action necessary to authorize the execution and delivery of this Agreement, the performance of its obligations hereunder and the consummation of the transactions contemplated hereby to be consummated by it.

9.2 County. The County represents and warrants as follows:

9.2.1 This Agreement has been duly executed and delivered by the County and constitutes a legal, valid and binding obligation of the County, enforceable against the County in accordance with its terms.

9.2.2 The County has the power and authority to execute and deliver this Agreement and to perform its obligations hereunder. The County has taken all action necessary to authorize the execution and delivery of this Agreement, the performance of its obligations hereunder and the consummation of the transactions contemplated hereby to be consummated by it.

ARTICLE 10. NOTICES

All notices or other communications to be given hereunder shall be in writing and shall be sent by facsimile, overnight delivery or registered or certified United States mail, return receipt requested, properly addressed as follows:

To the Contractor:
American Recycling of South Carolina, LLC
1240 White Horse Rd.
Greenville, SC 29605
Phone: 864-277-7722
Facsimile: 864-277-7733
Attn: Ron Moore

To the County:
Office of the County Manager
Henderson County
1 Historic Courthouse Square, Ste 2
Hendersonville, NC 28792

with copy to Office of the County Attorney
Henderson County
1 Historic Courthouse Square, Ste 5
Hendersonville, NC 28792

ARTICLE 11. GENERAL PROVISIONS

11.1 Hold Harmless/Indemnification.

11.1.1 As to the Contractor. The County, to the extent of its liability insurance coverage, hereby agrees to save, protect, defend, indemnify, and hold the Contractor and its employees harmless from and against any and all claims, liabilities, demands, damages, judgments, awards, settlements, expenses, or losses, arising out of (i) the negligence or intentional misconduct of the County and its employees, (ii) the breach by the County of any of the representations, warranties, covenants, and agreements made by the County set forth in this Agreement, (iii) any damage to property and injuries (including death) to any persons, caused by the County or its employees and (iv) any damage to property and injuries (including death) to any persons, caused by the Contractor, its employees, agents, or permitted subcontractors. The County, at its option, may control the defense of any claim subject to the foregoing indemnity, and the Contractor will cooperate with the County in such defense in all reasonable respects, at no cost to the Contractor.

11.1.2 As to the County. The Contractor hereby agrees to save, protect, defend, indemnify, and hold the County and its employees harmless from and against any and all claims, liabilities, demands, damages, judgments, awards, settlements, expenses, or losses, arising out of (i) the negligence or intentional misconduct of the Contractor and its employees and its permitted subcontractors, (ii) the Contractor's use of subcontractors' services if permitted hereunder, (iii) the breach by the Contractor of any of its representations, warranties, covenants, and agreements made by the Contractor set forth in this Agreement, and (iv) any damage to property and injuries (including death) to any persons, caused by the Contractor, its employees, agents, or permitted subcontractors. The Contractor, at its option, may control the defense of any claim subject to the foregoing indemnity, and the County will cooperate with the Contractor in such defense in all reasonable respects, at no cost to the County.

11.2 Insurance. Before performing any work under this Agreement, Contractor shall procure and maintain, during the life of the Agreement, unless otherwise specified, Commercial General Liability which includes insurance for bodily injury, property damage, contractual, products and completed operations, and personal injury with limits of not less than \$1,000,000 combined single limit per occurrence for bodily injury, property damage, and personnel injury with a \$1,000,000 general aggregate limit covering all work performed under this Agreement. The Contractor shall also require any subcontractors to carry the same coverage in the same amounts.

11.3 Controlling Law. This Agreement sets forth the entire agreement and understanding of the Parties hereto with respect to the subject matter of this Agreement and supersedes all arrangements, communications, representations or warranties, whether oral or written, by any officer, employee or representative of either Party hereto. This Agreement may not be modified, amended, supplemented, canceled, or discharged, except by written instrument executed by all of the Parties hereto. There are no restrictions, representations, warranties, covenants or undertakings other than those expressly set forth or referred to herein. No waiver shall be effective unless it is in writing and is signed by the Party asserted to have granted the waiver. The provisions of this Agreement are independent of and severable from each other, and no provision shall be affected or rendered invalid or unenforceable by virtue of the fact that any provision may be invalid or unenforceable in whole or in part. This Agreement is not intended to confer upon any third parties, other than the Parties hereto, any rights or remedies. This Agreement shall be governed by the laws of the State of North Carolina and any and all disputes arising out of the Agreement shall, if they cannot be resolved without litigation, be litigated only in a non-jury hearing. This Agreement may be executed in any number of counterparts, each of which shall be an original, but all of which together shall constitute one and the same instrument.

11.4 Arm's Length Negotiations. Each Party hereto expressly represents and warrants to all other Parties hereto that: (a) before executing this Agreement, said Party has fully informed itself of the terms, contents, conditions and effects of this Agreement; (b) said Party has relied solely and completely upon its own judgment in executing this Agreement; (c) said Party has had the opportunity to seek and has obtained the advice of counsel before executing this Agreement; (d) said Party has acted voluntarily and of its own free will in executing this Agreement; (e) said Party is not acting under duress, whether economic or physical, in executing this Agreement; and (f) this Agreement is the result of arm's length negotiations conducted by and among the Parties hereto and their respective counsel.

11.5 Construction. The Parties hereto agree and acknowledge that they have jointly participated in the negotiation and drafting of this Agreement. In the event of an ambiguity or question of intent or interpretation arises, this Agreement shall be construed as if drafted jointly by the Parties hereto and no presumptions or burdens of proof shall arise favoring any Party hereto by virtue of the authorship of any of the provisions of this Agreement. Any reference to any federal, state, local, or foreign statute or law shall be deemed also to refer to all rules and regulations promulgated thereunder, unless the context requires otherwise. If any Party hereto has breached any representation, warranty, or covenant contained herein in any respect, the fact that there exists another representation, warranty, or covenant relating to the same subject matter (regardless of the relative levels of specificity) which the Party has not breached shall not detract from or mitigate the fact that the Party is in breach of the first representation, warranty, or covenant.

ARTICLE 12. ASSIGNMENT AND/OR SUBCONTRACTING

This Agreement and any permits required for performance of the Agreement, may not be assigned, conveyed, or otherwise disposed of without the written permission of the other Party, which will not be unreasonably withheld. Unless otherwise expressly agreed by the Parties hereto, no such assignment shall relieve either Party of its liability under this Agreement. In the event Contractor elects to use any subcontractors, Contractor shall retain prime responsibility to the County of full and complete satisfactory and acceptable performance under this Agreement.

ARTICLE 13. TAXES

Contractor shall pay all applicable sales, consumer, use and other similar taxes required by Federal, State and local law. Contractor is responsible for reviewing the pertinent State Statutes involving the sales tax and complying with all requirements.

ARTICLE 14. FORCE MAJEURE

14.1 Force Majeure. Except for any payment obligation by either Party, if the County or Contractor is unable to perform, or is delayed in its performance of any of its obligations under this Agreement by reason of any event of Force Majeure, such inability or delay shall be excused at any time during which compliance therewith is prevented by such event and during such period thereafter as may be reasonably necessary for the County or Contractor to correct the adverse effect of such event of Force Majeure.

14.2 Notification. In order to be entitled to the benefit of this Section, a Party claiming an event of Force Majeure shall be required to give prompt written notice to the other Party specifying in detail the event of Force Majeure and shall further be required to use its best efforts to cure the event of Force Majeure. The Parties agree that, as to this Article, time is of the essence.

ARTICLE 15. MISCELLANEOUS

15.1 Succession of Agreement. This Agreement and the rights and obligation contained herein shall inure to the benefit of and be binding upon the Parties hereto and their respective successors and assigns.

15.2 Survival. Any rights either Party may have in the event it terminates this Agreement pursuant to the terms hereof shall survive such termination.

15.3 Relationship. Nothing contained in this Agreement shall constitute or be construed to be or create a partnership, joint venture or any other relationship between Contractor and County.

15.4 Further Assurance. Contractor and County agree to execute, acknowledge and deliver and cause to be done, executed, acknowledged and delivered all such further documents and perform such acts as shall reasonably be requested of it in order to carry out this Agreement and give effect hereto. Accordingly, without in any manner limiting the

specific rights and obligations set forth in this Agreement, the Parties declare their intention to cooperate with each other in effecting the terms of this Agreement.

- 15.5 Time of the Essence.** For purposes herein, the Parties agree that time shall be of the essence of this Agreement and the representations and warranties made are all material and of the essence of this Agreement.
- 15.6 Captions and Section Headings.** Captions and Section headings contained in this Agreement are for convenience and reference only and in no way define, describe, extend, or limit the scope or intent of this Agreement, nor the intent of any provision hereof.
- 15.7 No Waiver.** No waiver of any provision in this Agreement shall be effective unless it is in writing, signed by the Party against whom it is asserted, and any such written waiver shall only be applicable to the specific instance to which it relates and shall not be deemed to be a continuing or future waiver.
- 15.8 Gender.** All terms and words used in this Agreement, regardless of the number and gender in which used, shall be deemed to include any other gender or number as the context or the use thereof may require.
- 15.9 Severability.** In the event that any provision of this Agreement shall, for any reason, be determined to be invalid, illegal, or unenforceable in any respect, the Parties hereto shall negotiate in good faith and agree to such amendments, modifications, or supplements of or to this Agreement or such other appropriate actions as shall, to the maximum extent practicable in light of such determination, implement and give effect to the intentions of the Parties as reflected herein, and the other provisions of this Agreement shall, as so amended, modified, or supplemented, or otherwise affected by such action remain in full force and effect.
- 15.10 Schedules and Exhibits.** All schedules or exhibits attached hereto contain additional terms of this Agreement. Typewritten provisions inserted in this form or attached hereto shall control all printed provisions in conflict therewith.
- 15.11 Attorney Fees.** In the event of arbitration or litigation between the Parties regarding this Agreement, each Party shall be responsible for their own attorney's fees and costs.
- 15.12 Third Party Rights.** The Parties hereto do not intend nor shall this Agreement be construed to grant any rights, privileges or interest to any third party.
- 15.13 Modification.** Any modification to this Agreement must be in writing and signed by both Parties.

REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK

IN WITNESS WHEREOF, the Board of Commissioners of the County has approved this the 16th day of March, 2011, and the Parties have executed this Agreement the day and year first written above.

AMERICAN RECYCLING OF SOUTH CAROLINA LLC

By: 

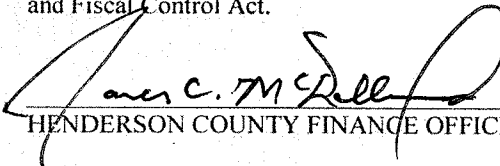
President/Member-manager

COUNTY OF HENDERSON

By: 

County Manager

This instrument has been preaudited in the manner required by the Local Government Budget and Fiscal Control Act.



HENDERSON COUNTY FINANCE OFFICER

HENDERSON COUNTY BOARD OF COMMISSIONERS

1 Historic Courthouse Square, Suite #1
Hendersonville, NC 28792
Phone (828) 697-4808 • Fax (828) 698-4443
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J. MICHAEL EDNEY
Chairman
THOMAS THOMPSON
Vice-Chairman

CHARLIE MESSER
LARRY YOUNG
BILL O'CONNOR

RESOLUTION

WESTERN HIGHLAND AREA AUTHORITY MEDICAID 1915 (b)/(c) WAIVER PROJECT

- WHEREAS,** the Western Highlands Area Authority serves as the Local Management Entity (LME) for mental health, developmental disabilities, and substance abuse services in the eight county region consisting of Buncombe, Henderson, Madison, Mitchell, Polk, Rutherford, Transylvania and Yancey counties; and
- WHEREAS,** North Carolina statute [N.C.G.S. 122C-115(a)] requires that “a county shall provide mental health, developmental disabilities, and substance abuse services through an area authority”; and
- WHEREAS,** the federal medical assistance program known as Medicaid permits states to receive permission to waive numerous requirements of Title XIX of the Social Security Act so as to increase consumer access to care, improve quality of care, and demonstrate cost effectiveness; and
- WHEREAS,** the North Carolina Department of Health and Human Services designated Western Highlands to participate in the ongoing 1915(b)/(c) Medicaid Waiver for mental health, developmental disabilities, and substance abuse services delivered to Medicaid recipients within the region served by Western Highlands Area Authority; and
- WHEREAS,** the Waiver allows Western Highlands to manage and authorize all Medicaid and State-funded mental health, developmental disabilities, and substance abuse services locally with the public policy purpose to deliver “the right services to the right person at the right time in the right amount at the right cost”; and
- WHEREAS,** the Waiver requires of Western Highlands to pay for all Medicaid and State-funded mental health, developmental disabilities, and substance abuse services from an annual finite, capitated amount of funds Medicaid and state funds ; and
- WHEREAS,** the North Carolina Department of Health and Human Services perceives such Waiver as the future model of managing mental health, developmental disabilities, and substance abuse services; and

WHEREAS, the Henderson County Board of Commissioners is committed to ensuring a sustainable and effective system of mental health, developmental disabilities, and substance abuse services to serve our citizens and their families; and

WHEREAS, the Henderson County Board of Commissioners has committed significant local resources to ensure the availability of a sustainable and effective system of mental health, developmental disabilities, and substance abuse services to serve our citizens and their families; and

WHEREAS, North Carolina statute [N.C.G.S. 122C-115.3(g)] requires that, upon the dissolution of an area authority, any unsatisfied indebtedness of the dissolved area authority shall be satisfied by participating counties on a pro rata basis; and

WHEREAS, the proposal for Western Highlands to assume control of the management and payment of mental health, developmental disabilities, and substance abuse services delivered to Medicaid recipients contains a federally mandated, state funded “stop loss” set aside at the level of 2% of administrative costs, however the risk pool level for Western Highlands to set aside prior to authorization and utilization of “1915(b)(3) Waiver services” is \$15,000,000; and

WHEREAS, the Henderson County Board of Commissioners must balance the potential benefits to our citizens and their families arising from the Waiver’s local management, oversight and payment of mental health, developmental disabilities, and substance abuse services with the corresponding potential increased financial liability of the County; and

WHEREAS, the Henderson County Board of Commissioners would oppose “savings” through reduced access to mental health, developmental disabilities, and substance abuse services;


NOW, THEREFORE BE IT RESOLVED by the Henderson County Board of Commissioners, that Henderson County endorses the Western Highlands Area Authority Network’s participation in the proposed Medicaid 1915(b)/(c) Waiver under the following conditions and failure to adhere to this criteria would result in a review of our continued participation:

- A recognition that the unique Board composition of Western Highlands, which includes 8 County Managers; will be maintained as this provides additional fiscal and management capacity to oversee the Waiver.
- Western Highlands Area Authority completely comply with their IT Plan prior to the start date as this infrastructure is necessary in order to gain the efficiencies needed to generate savings to support service flexibility.
- Western Highlands Area Authority provides detailed monthly reports to Henderson County specific to service expansion and service denials related to the Waiver.
- Western Highlands Area Authority completes the funding of the risk pool amount of \$15,000,000 prior to authorization and utilization of “1915(b)(3) Waiver services”.

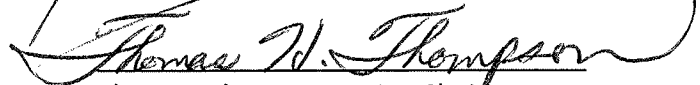
- Western Highlands Area Authority present monthly reports to the County specific to the number and outcome of appeals by consumers and providers.
- Western Highlands Area Authority provides monthly financial and risk pool data analysis to the designated County representative.

FURTHERMORE, by supporting this action, Henderson County assumes no additional financial obligation to the Western Highlands Area Authority other than to maintain its statutorily mandated Maintenance of Effort funding level pursuant to N.C.G.S. 122C-115(d), and to comply with N.C.G.S. 122C-115.3(g).

Adopted this the 16th day of March, 2011.



J. Michael Edney, Chairman



Thomas Thompson, Vice Chairman

Charlie Messer, Commissioner



Larry Young, Commissioner

Bill O'Connor, Commissioner



Teresa Wilson
Clerk to the Board of Commissioners