

DRAFT

7-26-11

cc: Boc
Steve
Selena
Russ
Christy

MINUTES

**STATE OF NORTH CAROLINA
COUNTY OF HENDERSON**

**BOARD OF COMMISSIONERS
WEDNESDAY, JULY 20, 2011**

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

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, Attorney Russ Burrell and Clerk to the Board Teresa Wilson.

Also present were: Public Information Officer Christy DeStefano, Planning Director Anthony Starr, Associate County Attorney Sarah Zambon, Engineer Marcus Jones, Research/Budget Analyst Amy Brantley, Sergeant Jeff Patterson, Corporal Mike Marsteller, Construction Manager David Berry, Assessor/Tax Collector Stan Duncan, IT Director Beck Snyder, Registrar of Deeds Nedra Moles, Animal Services Director Brad Rayfield, Internal Auditor Darlene Burgess, Engineering Administrative Assistant Megan Piner, and HR Director Jan Prichard.

CALL TO ORDER/WELCOME

Chairman Edney called the meeting to order and welcomed all in attendance.

PLEDGE OF ALLEGIANCE

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

INVOCATION

County Manager Steve Wyatt gave the invocation.

INFORMAL PUBLIC COMMENT

1. Terri Thompson – Ms. Thompson spoke on behalf of the Blue Ridge Humane Society. They oppose the Animal Ordinance modifications.
2. Donna French – Ms. French is a dog obedience instructor. She opposes the change in the Animal Ordinance modifications.
3. Ruben Brown – Mr. Brown lives on a private road and asked if the Board could assist in getting a road maintenance agreement. (Chairman Edney explained that the Board has no authority with private property)
4. Mary Cervini – Mrs. Cervini opposes the ordinance modification and feels the ordinance is working great as it is now written.
5. Mike Cervini – Mr. Cervini spoke on behalf of the Community Partnership for Pets. They along with other animal welfare agencies in the county, including the county shelter, are working to provide healthy, adoptable, vaccinated, spay/neutered pets to our community. He opposes the modification to the ordinance.
6. Pam Burgess – Ms. Burgess works for the Asheville Humane Society. The AHS feels that passing such an amendment will enable the sale of animals to citizens who might otherwise choose to adopt a homeless pet from a local animal welfare agency or municipal shelter. They oppose the Ordinance modification.
7. Virginia Schmidt – Ms. Schmidt opposes the ordinance change. People who bring in pets from out of state are required to have a State Health Certificate on the animal. This is not being checked.
8. Guri Andermann – Ms. Andermann was in agreement with other speakers. She requested the Board

APPROVED:

- not modify the ordinance.
9. Pam McLaughlin – Ms. Laughlin feels the sellers are not professional and damage will be done. She requested the ordinance remain as is.
 10. Ray McCaslin – Mr. McCaslin was in agreement with other statements. Continue to enforce the ordinance as it is written.
 11. Fielding Lucas – Mr. Lucas has studied the new management agreement between Pardee Hospital and UNC Health Care. He feels that Pardee cannot make it alone for very long. UNC Health Care Systems has beautiful medical skills and could take Pardee out of its tertiary role here, at a really broad service facility for Henderson County, particularly for senior citizens.
 12. Erma Huntley Rhodes – Ms. Rhodes stated that animals continue to be sold at Smiley's Flea Market. She attends Smiley's regularly. She requested that the ordinance not be changed but enforced.
 13. Judith Ann Smith – Ms. Smith is associated with the Hendersonville Kennel Club and requested that the ordinance remain the same.
 14. Barbara Glassman – Ms. Glassman spoke in opposition of the modification to the Animal Ordinance. She feels making this modification will cost the County more money.
 15. Stewart David – Mr. David is president of Carolina Animal Action in Asheville. Buncombe County made the decision to not allow pet sales at Dreamland Flea Market years ago. This change did make a big positive difference. He asked the Board to consider being a good neighbor, as this will affect Buncombe County also, and not adopt the modification.
 16. Pat deLemos – Ms. deLemos feels the modification to the ordinance will only cause more problems and cost for the County.

DISCUSSION/ADJUSTMENT OF AGENDA

Commissioner Thompson suggested moving the Animal Ordinance modification as the first discussion item since so many people in attendance were present to hear this item.

Commissioner Thompson made the motion to adopt the Agenda with the change of order as requested. All voted in favor and the motion carried.

CONSENT AGENDA

Commissioner Thompson 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):

- June 6, 2011 – Regularly Scheduled Meeting
- June 7, 2011 – Continuation of Regularly Scheduled Meeting
- June 13, 2011 – Special Called Meeting
- June 15, 2011 – Regularly Scheduled Meeting

Tax Collector's Report

Deputy Tax Collector Carol McCraw had presented the Tax Collector's Report to the Commissioners dated July 8, 2011 for information only. No action was required

Tax Refunds

A list of 3 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 tax release request was presented for the Board of Commissioners review and approval.

Motion:

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

Capital Facilities Status Reports

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

July Construction Management Update

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

Energy Management Update

Marcus Jones provided information to the Board in regards to the County's energy management use in the areas of electricity, natural gas, and water.

Fuel data was not included in this quarter due to inaccurate information; fuel data from the fourth quarter and the end of FY2011 will be reported with the first quarter of FY 2012.

Environmental Advisory Committee Bylaws

The Environmental Advisory Committee reviewed its bylaws and recommends several changes outlined in the attached draft bylaws. Most of the changes were procedural in nature and intended to mirror the bylaws of other boards and committees in the County. The substantive changes are highlighted and underlined and include:

- Revision of the Charter and purpose to clarify the Committee's function, prevent repetition within the document and the bylaws and delete provisions that are within the jurisdiction of other boards or committees;
- Change the meetings from monthly to quarterly; and
- Allow the formation of sub-committees.

These changes were recommended by the Environmental Advisory Committee at its June meeting. No changes have been made to the provisions regarding member term, number of terms or selection of the Chair by the Board of Commissioners.

Motion:

I move the approval of the changes to the Henderson County Environmental Advisory Committee Bylaws.

Surplus Vehicles

A resolution declaring a list of vehicles no longer being used by the County was provided for the Board's for consideration as surplus property. The resolution authorizes staff to advertise the surplus vehicles for sale by electronic public auction at www.govdeals.com after the required advertisement of the sale.

Motion:

I move the Board approves the resolution declaring the list of vehicles as surplus and authorize staff to sell the surplus vehicles by electronic public auction utilizing GovDeals auction services after the required advertisement.

Partnership Expenses at Fairgrounds Property

The Partnership for Economic Development recently incurred \$47,381.95 in costs associated with the former County Fairgrounds Property. To reimburse the Partnership for those expenses, it is requested that the Board consider crediting that amount against the rent paid to the County by the Partnership until the amount expended has been met.

Motion:

I move the Board credits the \$47,381.95 expended by the Partnership for Economic Development against their rent currently being paid to the County until that amount has been met.

Annual Volunteer Appreciation Banquet

Staff requests that the Board look at their calendars regarding the date for the 2011 Annual Volunteer Appreciation Banquet. The Banquet has been held for the last several years at Highland Lake and was very successful, accommodating well the number of volunteers who daily work to better Henderson County. Staff plans to hold this year's banquet again at Highland Lake Inn, and has tentatively scheduled the date for Tuesday, October 18th.

Non-Profit Performance Agreements

Subsequent to the approval of the FY 2011-2012 Budget, staff distributed the funding agreements to the non-profit agencies receiving County allocations.

1. Arts Council of Henderson County	\$9,250
2. Blue Ridge Literacy Council	\$13,225
3. Boys and Girls Club	\$10,500
4. Children and Family Resources Center	\$17,340
5. Community Development Council	\$925
6. Council on Aging	\$36,075
7. Dispute Settlement Center	\$10,500
8. Environmental and Conservation Organization	\$8,325
9. Healing Place	\$6,475
10. Historic 7 th Avenue District Inc.	\$460
11. Housing Assistance Corporation	\$11,750
12. Mainstay	\$9,900
13. Medical Loan Closet	\$4,625
14. Partnership for Economic Development	\$249,750
15. The Free Clinics – Medifind	\$5,500
16. The Free Clinics – Volunteer Program	\$21,645
17. United Way 211 Program	\$9,570
18. Vocational Solutions	\$41,625
19. Western Carolina Community Action – Medical Transport	\$11,100
20. Western Carolina Community Action – Transportation grant	\$39,754
21. WNC Communities	\$5,550

Motion:

I move the Board authorizes the Chairman to execute the funding agreements provided and in doing so, authorizes the release of the first of the aforementioned agencies' quarterly allotments.

Revised FY 12 Consolidated Agreement with the NC Department of Health and Human Services (NCDSSH)

The FY12 Consolidated Agreement with NC DHHS was approved at the March 7, 2011 meeting of the Henderson County Board of Commissioners meeting as Consent Item K. The agreement basically sets

conditions that the local health department will comply with in order to receive State and Federal funds. A revision to the year FY12 Consolidated Agreement has been sent for review and consent due to the need for some clarification as well as to include some changes based on this year's State Legislative Session. Staff's review of the revisions in this FY12 Consolidated Agreement indicates to no negative impact to Henderson County and that the Henderson County Department of Public Health can fully comply with this contract in order to receive the State and Federal allocations.

Motion:

I move that this Revised FY12 Consolidated Agreement with the NC Department of Health and Human Services be approved.

Designation of Voting Delegate to NCACC Annual Conference

The North Carolina Association of County Commissioners (NCACC) has requested that the Board of Commissioners designate a Voting Delegate to the Annual Conference being held in Cabarrus County, NC, on August 18 – 21, 2011.

Motion:

I move the Board designates Chairman Edney as Henderson County's voting delegate to the NCACC Annual Conference.

Public Records Disposal Request

Staff is requesting approval from the Board of Commissioners to destroy the records listed on the attached Public Disposal Request and Destruction Logs – **two (2) included** in accordance with the County's Record Retention Policy and the provisions of the North Carolina Department of Cultural Resources Records Retention and Disposition Schedule, a copy of said page attached hereto, as the period of these records have expired, or they have been scanned and retained in said format.

Motion:

I move the Board approves the Public Records Disposal Request and Destruction Log.

Electronic Recording of Public Meetings and Appeals

The Board was provided with the proposed language that will allow county departments to keep electronic recordings of public meetings and hearings instead of creating minutes or verbatim transcripts of these proceedings. In the departments that already have recording capabilities, electronic recordings are easier to store, access and do not require the significant staff time required to make the verbatim records.

The proposed language takes precautions in order to protect the rights of appellants and is substantially based on various passages of the North Carolina Rules of Appellate Procedure. Electronic record shall be kept in the manner established by the North Carolina Department of Cultural Resources who establishes retention schedules for all public documents.

This language will be added to Chapter 6 "Boards and Committees" of the Henderson County Code as Section 25.

MOTION:

I move the approval of the ordinance language to be inserted into the Henderson County Code as §6-25.

§6-21 through 6-24 are reserved for future use

§6-25 Record of Proceedings

- A. Electronic recordings. Henderson County will keep minutes of all meetings, and in cases in which a record on appeal could be required by a Court of record, a transcript, or an electronic recording in such a way that will be adequate to record fully the proceedings of each meeting, hearing or other proceeding.
1. Public record. Any electronic recordings are available to the public in any and all manners in which the County is capable of providing them, at a cost set by the County's fee schedule, as amended from time to time.
 2. Electronic record retention. Records shall be kept in accordance with North Carolina Public Records law and the records retention schedule established by the North Carolina Department of Cultural Resources.
 3. Meeting Summary. In instances where electronic recordings are utilized as the official minutes, boards and committees may elect to create meeting summaries including the attendance, matters discussed with any actions taken, identification of documents presented, and any votes taken. When votes are not unanimous, the meeting summary should indicate the votes of each member of the board or committee.
- B. Record on Appeal. Henderson County shall make the electronic recordings available to any appellant in order to prepare a verbatim transcript of the proceeding being appealed.
1. The appellant must make provision for the creation of a verbatim transcript from the electronic recording.
 2. The appellant's transcriptionist may have 45 days to prepare the transcript from the electronic recording and provide copies to the Clerk of Court and the respective parties. In certain circumstances, the time for preparation may be extended upon agreement of the parties and with the permission of the Court.
 3. The appellant shall bear the initial cost of transcription, subject to being taxed by the Court as a cost of any appeal.
 4. No part of this Ordinance is intended to conflict with North Carolina General Statutes or North Carolina Rules of Appellate Procedure. In any instance of conflict, the General Statutes and Rules of Appellate Procedure shall be followed.

Reimbursement resolution for Henderson County Hospital Corporation

Henderson County Hospital Corporation's Board of Trustees has determined it would be in the best interest of the Corporation to purchase another local medical practice, Hendersonville Hematology and Oncology, in accord with its long-term plans. Included in this purchase is the purchase of real estate used in such practice.

The Hospital Corporation contemplates that the initial purchases of this practice will be made from available cash reserves. However, the Corporation Board wants to keep open for now the option of financing these purchases. To do so, since all real estate is held in the name of the County, and since any borrowing done would (1) require County approval and (2) likely require the real estate to be pledged as collateral for the loan, this resolution is required.

Motion:

I move that the Board adopts the Reimbursement Resolution contained together with the agenda.

NOMINATIONS

Chairman Edney reminded the Board of Vacancies and opened the floor for nominations.

Notification of Vacancies

1. Fire and Rescue Advisory Committee – 1 vac.
2. Historic Resources Commission – 1 vac.
3. Hendersonville City Zoning Board of Adjustment – 3 vac.
4. Nursing/Adult Care Home Community Advisory Committee – 2 vac.

Nominations

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

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

2. EMS Quality Management Committee – 3 vac.

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

3. Environmental Advisory Committee – 1 vac.

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

4. Henderson County Board of Health – 2 vac.

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

5. Historic Resources Commission – 1 vac.

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

6. Juvenile Crime Prevention Council – 12 vac.

Commissioner Thompson nominated Angela Garner for position #6 and Josh Houston for position #19. *Chairman Edney made the motion to accept the appointments of Angela Garner to position #6 and Josh Houston position #19 by acclamation. All voted in favor and the motion carried.*

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

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

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

Chairman Edney nominated Aubrey Carruth for reappointment to position #3. *Chairman Edney made the motion to accept the reappointment of Aubrey Carruth to position #3 by acclamation. All voted in favor and the motion carried.*

9. Senior Volunteer Services Advisory Council – 3 vac.

Commissioner O'Connor nominated Sandy Brown for position #2. *Chairman Edney made the motion to accept the appointment of Sandy Brown to position #2 by acclamation. All voted in favor and the motion carried.*

ANIMAL ORDINANCE MODIFICATION

Members of the Board have requested that the Board consider modification of the Animal Ordinance (Chapter 66A of the Henderson County Code) asking the lines of the proposed modification to Section 66A-26 of the Code.

§66A -26 Prohibition against giveaways in public places

It shall be unlawful to sell, trade, give away or use as a prize or inducement any animal in a public place. For the purpose of this section public place shall be defined as parking lots, road right-of-ways, and parks. There are the following exceptions to the prohibitions of this section:

- a. This section does not apply to state regulated pet shops, commercial kennels, licensed animal shelters, veterinarian offices, licensed stockyards or livestock auctions or 501(c)(3) non-profits who adopt out animals with proof of rabies vaccination and alteration.
- b. This section does not apply to open-air markets, farmer's markets, or flea markets. In these locations, canines and felines may be sold provided that:
 - i. The animals have adequate shelter and appropriate shade.
 - ii. The animals have a sufficient amount of fresh water available at all times.
 - iii. All animals meeting the age and weight requirements for rabies vaccination set forth in this chapter must be vaccinated against rabies. If the animals do not meet the age and weight requirements for rabies vaccination at the time of transfer, the seller must supply the purchaser with a written notification of the purchaser's duty to obtain such vaccination.

Chairman Edney was in support of increasing venues to allow for pets to be adopted or sold at Flea Markets, but there needs to be regulations to make sure it is done in a safe manner. He suggested giving the Animal Services Committee direction that the Board would like the expansion but let the Committee come back with some recommendations on health certificates, spay/neuter, basic enforcement.

Ms. Coffey felt this could be brought back before the Board in approximately 2 months, mid month September.

Commissioner Young made the motion that the Board directs the Animal Services Committee to come back with language authorizing sale in these locations, suggesting restrictions and ways to address concerns. He further requested information in regards to the number of dogs being adopted and the cost for a medical certificate from a veterinarian. All voted in favor and the motion carried.

BREAK

A short break was taken.

FY 2010-2011 TAX COLLECTION SETTLEMENT; FY 2011-2012 TAX ORDER FOR COLLECTION

Assessor/Tax Collector Stan Duncan stated it is time once again for the delivery of the tax receipts to the Henderson County Tax Collector (all references to the Tax Collector on this document and all subsequent attachments are to Tax Collector Stan Duncan); however before they can be delivered, the following must occur (pursuant to N.C.G.S. 105-352):

- (a) **PREPAYMENTS.** The Tax Collector must deliver any duplicate bills printed for prepayments received by the Tax Collector to the Finance Director and demonstrate to the Finance Director's satisfaction that all prepayments received have been deposited.
- (b) **SETTLEMENT.** The Tax Collector must make settlement with the Board of Commissioners for all taxes placed in his hands for collection for the past year.
- (c) **BOND.** The Board of Commissioners must approve the bond to be issued for the Tax Collector and Deputy Tax Collector for Delinquent Taxes.

(d) **ORDER OF COLLECTION.** An Order of Collection must be adopted at today's meeting, which will charge the Tax Collector with the collection of FY 2012 taxes, plus all outstanding delinquent taxes.

Be it ordained by the Henderson County Board of Commissioners, meeting on the 7th day of June 2010:

Ad Valorem Taxes

- Current Year Taxes \$58,549,491.00
- Prior Year Taxes, Interest, and Penalties \$1,640,000.00
- As of June 30, 2011, the tax department had collected the following toward the original charge as stated in the FY 2010-2011 Budget Ordinance:
 - \$59,261,668.78 for current year (2010-11FY) taxes; or \$712,177.78 above the charge as stated in the Budget Ordinance.
 - \$1,730,995.79 for prior year taxes that were delinquent; \$90,995.79 above the delinquent charge as stated in the Budget Ordinance.

N.C.G. S. 105-373. Settlements

Per NCGS 105-373(a)(3)b, The tax collector shall be credited with:

1. All sums representing taxes for the year deposited by him to the credit of the taxing unit or receipted for by a proper official of the unit;
2. Releases duly allowed by the governing body;
3. The principal amount of taxes constituting liens on real property (\$1,460,518.19);
4. The principal amount of taxes included in the insolvent list determined in accordance with subdivision (a)(2) (\$507,939.07);
5. Discounts allowed by law; (not applicable to Henderson Co.);
6. Commissions (if any) lawfully payable to the tax collector as compensation; and (not applicable in Henderson Co.);
7. The principal amount of taxes for any assessment appealed to the Property Tax Commission when the appeal has not been finally adjudicated. (\$110,796.49 collected of \$108,094.14 billed)

County Tax Foreclosure Statistics

- Parcels in pre-foreclosure FY2010-2011: 283
- Potential Amount of Taxes to be collected: \$363,886.29
- Number of Judgments Docketed: 12
- Amount of Taxes as of 20 July 2011 subject to Judgment: \$10,997.08
- Next Foreclosure Sale: October 2011

Mr. Duncan could not say if there was an affect or not from using the Hendersonville Tribune for Advertising. He would track for another year. Bills for 2011 will go out approximately August 15, 2011.

Commissioner Young made the motion that the Board approves the tax collector's settlement for Fiscal Year 2011 taxes, and further approves the bonds, the order of collection and charge for collection to the tax collector for Fiscal Year 2012 taxes. All voted in favor and the motion carried.

CONTRACTOR SELECTION – SOLAR THERMAL HOT WATER FOR DETENTION CENTER

Marcus Jones stated during the September 8, 2009 meeting, the Board directed the Engineering Department to apply for an ARRA (Stimulus) grant for a project to install a solar thermal hot water system for the Detention Center. The system would be physically located in and on the 1995 Courthouse where the primary hot water system for the Detention Center is located. On February 1, 2011, the Engineering Department received the attached letter from the State Energy Office awarding a grant of

\$71,419 to the project. As indicated during the initial meeting, the remainder of the funding for the project would be from a Power Purchase Agreement (PPA) with the selected contractor. This Agreement would be between the County and the contractor. The County provides the location for the system and agrees to purchase the BTUs from the solar system at a rate reduced from the gas company. In return, the Contractor designs, installs, maintains and monitors the system. The grant money will be provided to the contractor and will make the PPA more favorable to the County.

Upon notification of the grant, Engineering released a Request for Proposals (RFP) for the PPA. The first RFP was due on April 15, 2010 and received only one proposal from FLS Energy. Upon recommendation from the County Attorney due to limited response, another RFP (attached) was released with an opening date of May 27, 2011. Three proposals were received in response to the 2nd RFP: FLS Energy from Asheville, SolTherm from Asheville and SunQuest from Newton, NC. An Evaluation Matrix of the three proposals which summarizes the proposals based on the performance criteria outlined in the RFP is attached. An electronic copy of the proposals is available from the Engineering Department at mpiner@hendersoncountync.org.

The three proposals represent quality contractors all capable of performing the requirements of the RFP satisfactorily. From the Evaluation Matrix, two contractors' experience stood out from the three: FLS Energy and SolTherm. Furthermore the cost effectiveness of Soltherm stood out from the three; especially considering the buyout option after six years. With execution of the buyout, the County would receive double the savings. Note that under an agreement with SolTherm, the County would not assume ownership of the Renewable Energy Credits (RECs) after the buyout. However, SolTherm would continue to maintain and monitor the system.

Based on the evaluation of the proposals in accordance with the RFP's performance criteria, Engineering recommends selection of SolTherm. This recommendation is based on satisfactory review of the agreement and lease by the County Attorney. The grant schedule requires the project be complete by December 31, 2011 which is feasible but aggressive.

Commissioner Thompson made the motion that the Board approve the selection of SolTherm for the Power Purchase Agreement and Lease for the Solar Thermal Hot Water system at the Detention Center and upon review by the County Attorney, authorize the County Engineer to execute the requirement grant and PPA documents. All voted in favor and the motion carried.

BROADCASTING POLICIES AND PROCEDURES

Christina DeStefano stated per request, equipment has been purchased and installed that gives us the ability to stream meetings live. The program, 323Link, will stream meetings in real time, as well as archive all meetings recorded on a host server for citizens to access at a later time. This allows individuals who are unable to attend meetings, as well as those who do not have cable television and this cannot review Channel 11, to watch meetings on the internet.

The current cablecast policy does not cover internet broadcasting. This new policy sets the policies and procedures for this new capability.

Commissioner Messer made the motion that the Board of Commissioners approves the Internet Broadcasting Policies and Procedures. All voted in favor and the motion carried.

UPDATE ON ABC STORE ON UPWARD ROAD

At the June 6, 2011 meeting, the Board discussed a request regarding a referendum on ABC issues. At that meeting, it was the consensus of the Board that while they had not scheduled a referendum on ABC issues, they were currently considering the possibility of one. It was also the consensus of the Board to

oppose the operation of a satellite ABC store on Upward Road at the location proposed.

Charles L. Byrd, incoming Chairman of the Hendersonville ABC Board, requested an opportunity to address the Board at this meeting regarding the June 6th discussion.

Mr. Byrd stated the local ABC Board came up with the idea of third store when they looked at the additional revenue that was generated with the second store. Sales increased after the move from Four Seasons Mall to Thompson Street and continue to increase. Distributions to Henderson County for FY2010-2011 were \$50,000, with a total of \$2,433,384.00 since opening the store in November 1960. Distributions to Henderson County Schools were \$2,336,050.00 since opening. The ABC Board has also spent \$287,295.00 in alcohol & substance educational programs in the forms of scholarships, project graduation, guidance monies, billboards, etc. during the past 10 years. These monies were not part of the distribution. GS 18B-805(c)(3) requires disbursements at a minimum of 7%. The Hendersonville ABC Board pays a maximum of 12%.

Mr. Byrd asked the Board to reconsider their response to the State ABC Commission.

Commissioner O'Connor made the motion that the Board of Commissioners reconsider the City's request for a satellite ABC store on Upward Road and make a recommendation to the state by letter of support. All voted in favor and the motion carried.

Commissioner Young made the motion that the Board instructs the Board of Elections to put a referendum on the May primary ballot for malt beverage & wine, an ABC Store and liquor by the drink. All voted in favor and the motion carried.

HENDERSON COUNTY HOSPITAL CORPORATION MANAGEMENT AGREEMENT

The Management Agreement involving Henderson County Hospital Corporation and UNC Health Care has been completed and executed and was provided to the Board for review. Chairman Edney stated the Management Agreement has been officially approved by the Hospital Board, Board of Commissioners, and the UNC System. The primary purpose of the agenda item is to make it official and open to the public.

Commissioners Thompson, Young, and Messer are in favor of the management agreement.

Commissioner O'Connor opposes the management contract with UNC Health proposed for our Pardee Hospital on two grounds:

1. UNC Health is a public entity subsidized to the tune of \$37,000,000 by North Carolina taxpayers, without their consent. We can all agree that the horrific Supreme Court decision where the City Of New London, CN seized the property of one private citizen and gave it to another, was an astounding breach of the Constitutional protection for private property. There is no difference in any government using taxes to subsidize a public entity in competition with private enterprises in the same business.
2. On what will turn out to be a pipedream of a Henderson County Medical School, the Board of Commissioners will support the Pardee affiliation with UNCH without considering any other bid from a public or private organization. It is impossible to judge whether this is a good business decision unless there are competing bids.

Chairman Edney feels the relationship with UNC will allow them to grow and be stronger, and provide more services to our people.

EVALUATION OF COUNTY BOARDS AND COMMITTEES

Chairman Edney requested the Board discuss potential evaluation of the County's Boards and Committees. He requested staff review the committees and their structure and see if can deal with them in a more concise manner. There are several committees that could be combined or even dissolved.

MAINTENANCE OF PUBLIC FACILITIES

Commissioner Thompson requested the Board discuss issues related to the maintenance of public buildings. He would like to staff to look at the possibility of getting a central maintenance crew trained in all aspects of heating, plumbing, electrical, etc. maintaining all public buildings including schools.

Commissioner Thompson made the motion that staff look at the possibility of getting a central maintenance crew trained in all aspects to work on all county buildings. All voted in favor and the motion carried.

COUNTY MANAGER'S REPORT

Mr. Wyatt reminded the Board that we are \$770,000 behind in sales tax collection. He further noted that Apple Valley and North High Schools will be ready the second week of August for inspection. David Berry has arranged two dates: August 9th at 10:00 a.m. or August 10th at 2:00 p.m., should any Board member desire to attend.

CLOSED SESSION

Commissioner O'Connor made the motion that the Board go into closed session pursuant to N.C. Gen. Stat. §143-318.11(a), for the reasons set out in the Request for Board Action in today's Board agenda documents.

Pursuant to N.C. Gen. Stat. §143-318.11(a)(1), to prevent disclosure of information that is privileged or confidential pursuant to the law of North Carolina or the United States, or not considered a public record within the meaning of Chapter 132 of the General Statutes. The matter is not a public record pursuant to the provisions of N.C. Gen. Stat. §143-318.11, as the purpose of this closed session is to review general accounts from previous closed sessions for approval and, in some cases, for unsealing.

Pursuant to N.C. Gen. Stat. §143-318.11(a)(3), to consult with an attorney employed or retained by the Board to preserve attorney-client privilege.

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 Henderson County, including agreement on a tentative list of economic development incentives that may be offered by the Board in negotiations.

Pursuant to N.C. Gen. Stat. §143-318.11(a)(6), to consider the qualifications, competence, performance, character, fitness, conditions of appointment, or conditions of initial employment of an individual public officer or employee or prospective public officer or employee, or to hear or investigate a complaint, charge or grievance against an individual public officer or employee.

All voted in favor and the motion carried.

ADJOURN

Chairman Edney made the motion to go out of closed session and adjourn at 3:15 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

July 8, 2011

Re: Tax Collector's Report to Commissioners – 07/20/11 Meeting

Please find outlined below collections information through July 7th 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: 55,924,607.54
Unpaid Taxes: 1,599,806.83
Percentage Collected: 97.22%
(through 07/07/11)

2009 Total Charge: \$57,024,352.18
Payments & Releases: 55,626,982.69
Unpaid Taxes: 1,397,369.49
Percentage Collected: 97.55%
(through 07/07/10)

Motor Vehicle Bills G01 Only:

2010 Total Charge: \$3,771,693.77
Payments & Releases: 3,411,313.60
Unpaid Taxes: 360,380.17
Percentage Collected: 90.45%
(through 07/07/11)

2009 Total Charge: \$3,821,735.12
Payments & Releases: 3,435,756.74
Unpaid Taxes: 385,978.38
Percentage Collected: 89.90%
(through 07/07/10)

Fire Districts All Bills

Data Unavailable

Respectfully submitted,


Carol McCraw,
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
TDD: 828-697-4580
www.hendersoncountync.org

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

CHARLIE MESSER
BILL O'CONNOR
LARRY YOUNG

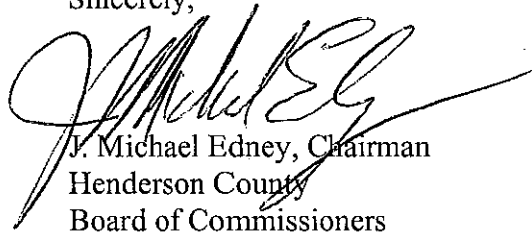
July 20, 2011

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

Dear Mr. Duncan:

Attached please find a tax release request, and tax refund requests (3), all approved at the Henderson County Board of Commissioners' Meeting on Wednesday, July 20, 2011.

Sincerely,



J. Michael Edney, Chairman
Henderson County
Board of Commissioners

JME/tlw

enclosures

RELEASES

PLEMONS, PHILIP FULL REBATE
 000249886-2010-2010-00000
 INDIVIDUAL ABSTRACT#: 000246088 5/27/11 1969 PIPER AIRCRAFT, BILLED IN ERROR, BILLED ON ABSTRACT 2890284.

Rebate #	Rate Type	Jurisdiction	Rebated Tax	Rebated Late List	Rebated Billed Interest	Total
82659	CHTY	COUNTY	147.84	0.00	0.00	\$ 147.84
82659	FIRE	BLUE RIDGE	27.20	0.00	0.00	\$ 27.20
Bill Total:						\$ 175.04
Grand Total:						\$ 175.04

Number of Bills = 1 Total Amount = \$ 175.04

REFUNDS

GREEN, RICHARD AUSTON FULL REBATE
 0000512526-2010-2010-00000
 DEBT SET & ACCOUNT GARNISHMENT RESEARCH RELEASE BILLS ON MANUFACTURED HOME FOR YRS: 1999, 2000 & 2001.
 HOME DESTROYED, INCIDENT REPORT ON FILE DATED 12/13/1998, DAMAGED/JUNKED, CBL 5/9/2011

Rebate #	Rate Type	Jurisdiction	Rebated Tax	Rebated Late List	Rebated Billed Interest	Total
92524	FIRE	BLUE RIDGE	2.22	0.00	0.00	\$ 2.22
92524	CNTY	COUNTY	12.35	0.00	0.00	\$ 12.35
Bill Total:						\$ 14.57

0000512527-2006-2006-00000 FULL REBATE
 DEBT SET & ACCOUNT GARNISHMENT RESEARCH RELEASE BILLS ON MANUFACTURED HOME FOR YRS: 1999, 2000 & 2001.
 HOME DESTROYED, INCIDENT REPORT ON FILE DATED 12/13/1998, DAMAGED/JUNKED, CBL 5/9/2011

Rebate #	Rate Type	Jurisdiction	Rebated Tax	Rebated Late List	Rebated Billed Interest	Total
92523	CHTY	COUNTY	13.40	0.00	0.00	\$ 13.40
92523	FIRE	BLUE RIDGE	2.41	0.00	0.00	\$ 2.41
Bill Total:						\$ 15.81

0000512528-1999-1999-00000 FULL REBATE
 RELEASE BILLS ON MANUFACTURED HOME FOR YEARS: 1999, 2000 AND 2001. HOME DESTROYED, INCIDENT REPORT ON
 FILE DATED 12/13/1998, HOME WAS DAMAGED AND JUNKED, CBL 5/9/2011

Rebate #	Rate Type	Jurisdiction	Rebated Tax	Rebated Late List	Rebated Billed Interest	Total
92522	CNTY	COUNTY	14.55	0.00	0.00	\$ 14.55
92522	FIRE	BLUE RIDGE	2.35	0.00	0.00	\$ 2.35
Bill Total:						\$ 16.90
Grand Total:						\$ 47.26

Number of Bills = 3 Total Amount = \$ 47.26

REQUEST FOR BOARD ACTION

HENDERSON COUNTY BOARD OF COMMISSIONERS

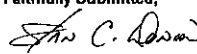
MEETING DATE: July 20, 2011
 SUBJECT: Tax Refunds
 PRESENTER: Assessor
 ATTACHMENTS: Refund Report

SUMMARY OF REQUEST:

The enclosed refund requests (3) 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	3	\$ 47.26

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

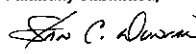
MEETING DATE: July 20, 2011
 SUBJECT: Tax Releases
 PRESENTER: Assessor
 ATTACHMENTS: Release Report

SUMMARY OF REQUEST:

The enclosed release requests (1) 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	1	\$ 175.04

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."

ENVIRONMENTAL ADVISORY COMMITTEE

CHARTER

The Environmental Advisory Committee shall assist and advise the Board of Commissioners on matters regarding environmental quality and protection. This may include comprehensive analysis, recommendations, and expertise on policies, compliance standards and programs and such other matters as the Board of Commissioners deems appropriate.

BYLAWS AND RULES OF PROCEDURE

- I. NAME: Environmental Advisory Committee (EAC).
- II. CHARTER. On the 20th day of July, 2011, the Henderson County Board of Commissioners approved the revised charter for the Environmental Advisory Committee (hereinafter referred to as "EAC") and subsequently appointed members to the Committee. The terms of the charter shall govern the activities of the Committee, and to the extent that these bylaws conflict with the charter, the terms of the charter shall control.
- III. PURPOSE. The purpose of this Committee is to make recommendations to the Board of Commissioners and staff regarding local and regional environmental topics and any other issues requested by the Board of Commissioners.
- IV. MEMBERSHIP
 - A. Selection of Membership. The Committee shall consist of 9 members. All appointments will be made by the Henderson County Board of Commissioners. Members will serve 2 year term. These members shall reflect the diverse backgrounds and perspectives of the citizens of Henderson County and shall have interest and knowledge of environmental issues. Members may represent, but are not limited to, areas such as transportation, agriculture, industry, commercial, real estate/developer, engineering and the general public.
 - B. Duties of Members. Duties of Committee will be as assigned by the Henderson County Board of Commissioners. All members shall serve the Committee on a solely voluntary basis and shall receive no compensation for their service.
 - C. Terms of Service. The term of service shall be 2 years. Members may not serve for more than 2 consecutive terms.
 - D. Ex-Officio Members. A Commissioner may be appointed and serve as an Ex-Officio Member of the EAC.
 - E. Vacancies and Reasons for Dismissal. All members serve at the pleasure of the Board of Commissioners. Members may be dismissed for any reason without cause including but not limited to failure to attend meetings. Vacancies on the Committee shall be filled by the Board of Commissioners at their earliest convenience. A vacancy of the Chair shall be filled by the Board of Commissioners. A vacancy in the Vice Chair shall be elected by a majority of the Committee at the next regularly scheduled meeting.
- V. MEETINGS
 - A. Open-Meetings Law. It is the public policy of North Carolina and Henderson County that the hearings, deliberations, and actions of this Committee be conducted openly. Except as allowed by NCGS 143-318.11 each meeting of the Committee shall be open to the public and any person is entitled to attend such a meeting. The public's right to attend such meeting does not necessary entitle the public to participate in the meeting.
 - B. Regularly Scheduled Meetings. The Committee shall hold meetings on a quarterly basis on the first Thursday of the corresponding months at 3:00pm in the Henderson County Land Development Building. A schedule of meetings shall be kept on file with the secretary of the Committee and the Clerk to the Henderson County Board of Commissioners. The Committee shall have the authority to change the schedule of regular meetings, and/or to change the date of a particular regularly scheduled meeting without the necessity of approval of the Board of Commissioners. If the Committee changes the schedule of regular meetings, the secretary shall forward a copy of the new schedule to the Clerk to the Board of Commissioners at least seven (7) days prior to the first meeting held pursuant to the new schedule. If a particular regularly scheduled meeting date is changed, the secretary shall comply with the notice provisions of the Special Meetings section below.

- C. **Special Meetings.** The Chair of the Committee or the majority of the members of the Committee may at any time call a special meeting of the Committee by signing a notice stating the time and place of the meeting and the subjects to be considered. Such notice must:
 - i. Be posted and advertised according to the rules for special meetings as utilized by the Clerk to the Board of Commissioners.
 - ii. Delivered to all members of the Committee at least 48 hours before the meeting.
 - iii. Only the business that is specified in the notice of the meeting may be transacted during a special meeting.
- D. **Public Input.** Public input at all Committee meetings shall have a 3 minute limit per speaker.
- E. **Attendance.** All members of the Committee are expected to attend the regular and/or special meetings of the Committee. Any member not able to attend must notify the secretary in advance of the meeting. Any member missing more than 25% of meetings in a calendar year will be subject to an appointment review by the Board of Commissioners.
- F. **Voting.**
 - a. **DUTY TO VOTE.** It is the duty of each member, including the chair, to vote unless otherwise excused. The Committee may excuse members from voting on any matter involving their own financial interest or official conduct or when a member has indicated an inability to be impartial.
 - b. **ABSTENTIONS.** Should a member fail to vote on any matter before the Committee, without having been excused from such vote, such abstention will count as an affirmative vote.
 - c. **TIE VOTE.** Tie votes at meetings shall be broken by the vote of the Chairman or acting Chairman.

VI. OFFICERS

A. Required Officers

- 1. **PRESIDING OFFICER.** The presiding officer of each meeting of the Committee shall be the Chair of the Committee. In situations where the chair is unavailable or unable to participate in the meeting or any particular matter before the Committee, the vice-chair shall preside. In the event that neither the chair nor the vice-chair is available, the members of the Committee, by affirmative vote of the majority, may appoint an acting chair who shall have all powers of the chair while acting as presiding officer.
- 2. **SELECTION OF THE CHAIR AND VICE-CHAIR.** The chair shall be selected by the Board of Commissioners. The vice-chair shall be elected by a majority vote of the Committee.
- 3. **POWERS AND DUTIES OF THE CHAIR AND VICE-CHAIR.** The chair shall preside at all meetings of the Committee but shall also have the right to engage in discussion and vote on any matter before the Committee unless otherwise excused. The chair shall have the power to call a special meeting, rule on procedural matters during a meeting, call a brief recess of a meeting at any time, and adjourn a meeting in an emergency. At any other time, adjournment shall be by motion, duly approved. The vice-chair shall have all powers and perform all the duties of the chair in his or her absence.
- 4. **DUTIES OF THE SECRETARY.** The staff person assigned to the Committee shall serve as the secretary of the Committee and shall perform the following:
 - A. The secretary shall ensure that all meetings of the Committee are properly noticed.
 - B. The secretary shall maintain the sunshine list which is a list of those persons or entities that have filed a written request indicating a desire to receive notice of all special meetings of the Committee.
 - C. The secretary shall take and record the actions of the Committee and draft minutes of the meetings accordingly. Minutes shall be sent to Committee members one week prior to their next regularly scheduled meeting. The secretary shall also forward a copy of the minutes as they are approved to the Clerk to the Board of Commissioners.
 - D. The secretary shall be responsible for maintaining an accurate list of members of the Committee, submitting to the Clerk to the Henderson County Board of Commissioners a quarterly attendance report for its members and notifying the Clerk to the Henderson County Board of Commissioners of any resignations of any of its members, or any other change in membership of the Committee.

- B. **Schedule for Elections.** Elections shall take place annually at the first regularly scheduled meeting of the calendar year as needed.

- C. Sub-Committees. Sub-committees shall be formed based on the discretion of the Committee or at the direction of the Board of Commissioners.

VII. RULES OF CONDUCT. This Committee shall follow Roberts Rules of Order.

VIII. REPORTS.

- A. Annual Report. The Committee shall make a report to the Henderson County Board of Commissioners at least annual. This report must be submitted no later than July 1st of each year. The Committee shall also make reports to the Board of Commissioners as needed or as requested.
- B. Public Records Law. The Committee shall abide by North Carolina's Public Records Law N.C.G.S. Chapter 132.

IX. ACTION BY THE COMMITTEE.

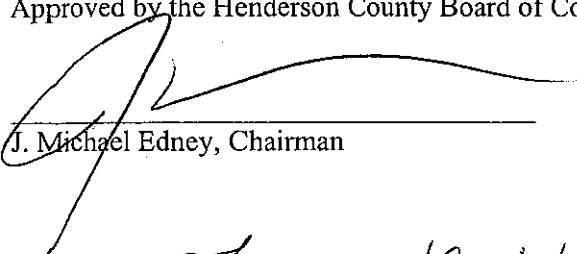
- A. Quorum. A majority of the members shall constitute a quorum. No action of the Committee may be taken at any meeting where less than a quorum is present. Once a quorum has been established, it will not be defeated if members leave.
- B. Projects. The Committee may recommend projects to the Board of Commissioners for their consideration and shall take any direction requested by the Board.
- C. Motions. Action of the Committee may be taken upon a motion made by any member, including the chair. A motion shall be adopted if approved by the affirmative vote of a majority of the members present and not excused, after full discussion of the motion by the members.
- D. Minutes. Minutes shall be kept of all meetings of the Committee. The secretary of the Committee shall present such minutes to the Committee for approval. Minutes of the meetings of the Committee shall be public records. The secretary shall be responsible for sending a copy of all approved minutes to the Clerk to the Board of Commissioners.
- E. Staff Support. County Staff shall be assigned to the EAC, acting as the liason between the EAC, County Departments, and the Board of Commissioners and shall have the charge of correspondence, minutes, notifying members of meetings and other information.

X. AMENDMENTS. The Committee may amend these bylaws by action of the Committee; provided however, that amendments shall not be effective until they are approved by the Henderson County Board of Commissioners.

Respectfully submitted by the Environmental Advisory Committee on this the 20th day of July 2011.


Dr. Robert Sweeney, Chair

Approved by the Henderson County Board of Commissioners on this the 20th day of July 2011.



J. Michael Edney, Chairman

Attest:



Teresa Wilson
Clerk to the Board of Commissioners

Exhibit A

**RESOLUTION DECLARING PERSONAL PROPERTY AS SURPLUS
AND AUTHORIZING THE SALE OF SURPLUS PROPERTY
BY ELECTRONIC PUBLIC AUCTION**

WHEREAS, Henderson County owns vehicles itemized on the attached Exhibit B, hereinafter referred to as "surplus property", that is either obsolete or no longer needed for any governmental use by the County; and

WHEREAS, the Henderson County Board of Commissioners is desirous of declaring the vehicles as surplus and selling at a public auction as authorized by NCGS 160A-270; and

WHEREAS, it is the intent of the County to sell said surplus vehicles by electronic public auction at www.govdeals.com.

NOW THEREFORE BE IT RESOLVED, by the Henderson County Board of Commissioners as follows:

1. The vehicles itemized on the attached Exhibit B is hereby declared to be surplus property.
2. The Finance Director is hereby authorized to sell by electronic auction at www.govdeals.com the surplus property described above to the highest bidder.
3. All surplus property will be sold "as is", all sales final, cash, certified check or money order only. Henderson County makes no express or implied warranties of merchantability of any surplus property, or part thereof, or its fitness for any particular purpose regardless of any oral statements that may be made concerning the surplus property or any part thereof.
4. A notice summarizing this Resolution and the sale of the surplus property by electronic public auction shall be advertised by the Finance Director on the County's website at www.hendersoncountync.org at least ten (10) days prior to the public auction.


THIS the 20th day of July, 2011.

HENDERSON COUNTY BOARD OF COMMISSIONERS

BY: _____

J. Michael Edney, Chairman

ATTEST:


Teresa L. Wilson, Clerk to the Board

[OFFICIAL SEAL]

Exhibit B

List of Surplus Vehicles

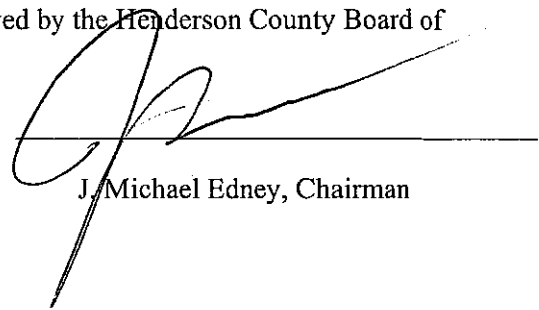
Year / Make / Model	HC#	VIN#	Asset#	Mileage
1997 FORD RANGER ROUGH SHAPE	LF-6389	1FTCR10U0VUB06668	6389	70,366
1999 DODGE DURANGO TRANSMISSION BAD	MP-017	1B4HS28Z1XF679180	11690	103,797

§6-21 through 6-24 are reserved for future use

§6-25 Record of Proceedings

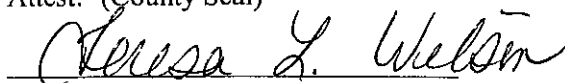
- A. Electronic recordings. Henderson County will keep minutes of all meetings, and in cases in which a record on appeal could be required by a Court of record, a transcript, or an electronic recording in such a way that will be adequate to record fully the proceedings of each meeting, hearing or other proceeding.
1. Public record. Any electronic recordings are available to the public in any and all manners in which the County is capable of providing them, at a cost set by the County's fee schedule, as amended from time to time.
 2. Electronic record retention. Records shall be kept in accordance with North Carolina Public Records law and the records retention schedule established by the North Carolina Department of Cultural Resources.
 3. Meeting Summary. In instances where electronic recordings are utilized as the official minutes, boards and committees may elect to create meeting summaries including the attendance, matters discussed with any actions taken, identification of documents presented, and any votes taken. When votes are not unanimous, the meeting summary should indicate the votes of each member of the board or committee.
- B. Record on Appeal. Henderson County shall make the electronic recordings available to any appellant in order to prepare a verbatim transcript of the proceeding being appealed.
1. The appellant must make provision for the creation of a verbatim transcript from the electronic recording.
 2. The appellant's transcriptionist may have 45 days to prepare the transcript from the electronic recording and provide copies to the Clerk of Court and the respective parties. In certain circumstances, the time for preparation may be extended upon agreement of the parties and with the permission of the Court.
 3. The appellant shall bear the initial cost of transcription, subject to being taxed by the Court as a cost of any appeal.
 4. No part of this Ordinance is intended to conflict with North Carolina General Statutes or North Carolina Rules of Appellate Procedure. In any instance of conflict, the General Statutes and Rules of Appellate Procedure shall be followed.

These revisions to the Henderson County Code were approved by the Henderson County Board of Commissioners on this the 20th day of July 2011.



J. Michael Edney, Chairman

Attest: (County Seal)



Teresa Wilson, Clerk to the Board

REQUEST FOR BOARD ACTION

HENDERSON COUNTY

BOARD OF COMMISSIONERS

MEETING DATE: 20 July 2011

SUBJECT: FY 2010-2011 Tax Collection Settlement; FY 2011-2012 Tax Order For Collection

PRESENTER: Tax Collector

ATTACHMENT(S): Proposed Order and Resolution

SUMMARY OF REQUEST:

It is time once again for the delivery of the tax receipts to the Henderson County Tax Collector (all references to the Tax Collector on this document and all subsequent attachments are to Tax Collector Stan Duncan); however before they can be delivered, the following must occur (pursuant to N.C.G.S. 105-352):

- (a) **PREPAYMENTS.** The Tax Collector must deliver any duplicate bills printed for prepayments received by the Tax Collector to the Finance Director and demonstrate to the Finance Director's satisfaction that all prepayments received have been deposited.
- (b) **SETTLEMENT.** The Tax Collector must make settlement with the Board of Commissioners for all taxes placed in his hands for collection for the past year.
- (c) **BOND.** The Board of Commissioners must approve the bond to be issued for the Tax Collector and Deputy Tax Collector for Delinquent Taxes.
- (d) **ORDER OF COLLECTION.** An Order of Collection must be adopted at today's meeting, which will charge the Tax Collector with the collection of FY 2012 taxes, plus all outstanding delinquent taxes.

The tax collector will be available to present further information on this matter.

BOARD ACTION REQUESTED:

Approval of tax collector's settlement for FY 2011 taxes and approval of order of collection and charge for FY 2012 taxes.

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

I move that the Board approve the tax collector's settlement for Fiscal Year 2011 taxes, and further approve the bonds, the order of collection and charge for collection to the tax collector for Fiscal Year 2012 taxes.

Resolution Setting the Bond Amounts for the Tax Collector and Deputy Tax Collector

WHEREAS, N.C.G.S. 105-352 requires that before the tax receipts are delivered to the Tax Collector for collection, the Board of Commissioners must approve a bond amount for the Tax Collector and Deputy Tax Collector; and

WHEREAS, the Board of Commissioners is desirous of complying with N.C.G.S. 105-352;

NOW THEREFORE IT BE RESOLVED AS FOLLOWS:

1. The Bond amount for the Tax Collector shall be set at \$1,000,000 through August of 2011.
2. The bond amount for the Deputy Tax Collector shall be set at \$250,000 to run through August of 2011.

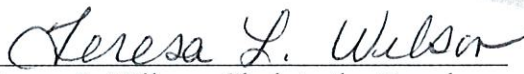
THIS the 20th day of July, 2011.

THE HENDERSON COUNTY BOARD OF COMMISSIONERS

BY: 

J. Michael Edney, Chairman

Attest: (County Seal)


Teresa L. Wilson, Clerk to the Board

Resolution Approving the Settlement with the Tax Collector for the 2010-2011 Tax Year

WHEREAS, N.C.G.S. 105-352 requires that settlement be made with the Tax Collector for the taxes charged to the Tax Collector in the previous tax year prior to delivery of the tax receipts to the Tax Collector for the current tax year, said settlement being conducted in accordance with N.C.G.S. 105-373; and

WHEREAS, N.C.G.S 105-373 requires that settlement be made for both taxes charged to the Tax Collector in the previous tax year, and for all delinquent taxes charged to the Tax Collector, there being a specified format for current tax year settlements, but not delinquent taxes; and

WHEREAS, the Henderson County Board Commissioners has received a proposed settlement for the 2010-2011 tax year taxes, and all delinquent taxes charged to the Tax Collector for prior tax years;

NOW THEREFORE BE IT RESOLVED AS FOLLOWS:

1. The Settlement for the 2010-2011 taxes charged to the Tax Collector is hereby approved. The Board finds:
 - a. All prepayments received by the Tax Collector were properly deposited;
 - b. The settlement is in proper form;
 - c. A diligent effort was made to collect from the person who were legally obligated to pay their taxes for the 2010-2011 fiscal year; and
 - d. Those persons identified in the report of insolvents submitted by the Tax Collector are found to be insolvents. The insolvents list shall be entered into the minutes and credited to the Tax Collector as part of this settlement.

2. The Settlement for the delinquent taxes charged to the tax collector for the previous fiscal years is hereby approved. The Board finds that the settlement for the delinquent taxes is in an appropriate form.

THIS the 20th day of July, 2011.

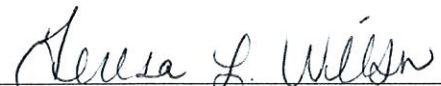
THE HENDERSON COUNTY BOARD OF COMMISSIONERS

BY: 

J. Michael Edney, Chairman

Attest:

(County Seal)


Teresa L. Wilson, Clerk to the Board

Resolution Adopting the Order of Collection for the 2011-2012 Tax Year

WHEREAS, N.C.G.S. 105-352 requires that before the tax receipts for the 2011-2012 Tax Year may be delivered to the Tax Collector for collection the following must occur: (1) the Tax Collector must deliver any duplicate bills printed for prepayments received by the Tax Collector to the Finance Director and demonstrate to the Finance Director's satisfaction that all prepayments received have been deposited; (2) the Tax Collector must make settlement with the Board of Commissioners for all taxes placed in his hands for collection for the 2010-2011 tax year; and (3) the Board of Commissioners must approve the bonds proposed for the Tax Collector (and the Deputy Tax Collector) for collection of all taxes charged for the 2011-2012 Tax Year and all delinquent taxes

WHEREAS, prepayments were received for 2011 taxes; and

WHEREAS, the Board of Commissioners has approved the settlement for the taxes charged to the Tax Collector for collection for the 2010-2011 tax year, including the delinquent taxes; and

WHEREAS, The Board of Commissioners has approved the bonds proposed for the Tax Collector and the Deputy Tax Collector;

NOW THEREFORE BE IT RESOLVED that the order of collection attached hereto is hereby adopted.


THIS the 20th day of July, 2011.

THE HENDERSON COUNTY BOARD OF COMMISSIONERS

BY: 

J. Michael Edney, Chairman

Attest: (County Seal)



Teresa L. Wilson, Clerk to the Board

STATE OF NORTH CAROLINA

ORDER OF COLLECTION

COUNTY OF HENDERSON

TO THE TAX COLLECTOR OF HENDERSON COUNTY:

You are hereby authorized, empowered, and commanded to collect the taxes, including current, insolvent and delinquent, set forth in the tax records filed in the Office of the Assessor for Henderson County and in the tax receipts herewith delivered to you, in the amounts and from the taxpayers likewise therein set forth. Such taxes are hereby declared to be a first lien upon all real property of the respective taxpayers in the County of Henderson, and this order shall be a full and sufficient authority to direct, require, and enable you to levy on and sell any real or personal property of such taxpayers, for and on account thereof, in accordance with law.

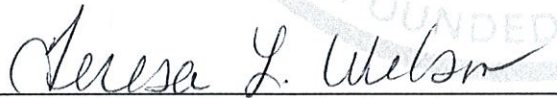
WITNESS my hand and official seal, this 20th day of July, 2011.

HENDERSON COUNTY BOARD OF COMMISSIONERS

BY: 

J. MICHAEL EDNEY, Chairman

ATTEST: (OFFICIAL SEAL)



Teresa L. Wilson, Clerk to the Board

HENDERSON COUNTY TAX COLLECTOR

200 NORTH GROVE STREET, SUITE 66

HENDERSONVILLE, NC 28792

PH: (828) 697-5595

FAX: (828) 697-4652

*Stan C. Duncan
Tax Collector*

20 July 2011

Henderson County Board of Commissioners
Henderson County Historic Courthouse
1 Historic Courthouse Square, Suite 1
Hendersonville, NC 28792

RE: Tax Collector's Settlement: FY 2010-2011

Dear Henderson County Commissioners:

Attached please find the Preliminary Report for FY 2010-2011 along with the Settlement for Current-Year Taxes and Delinquent Taxes. A list of all unpaid tax liens is available for your review in the Office of the Clerk to the Board.

I am happy to report that as of the close of FY 2010-2011, the Henderson County Tax Collector's Office collected 97.20% of the annual tax bills and 89.94% of the motor vehicle tax bills.

I would like to take the opportunity to thank the staff for their hard work and dedication toward these accomplishments. The actual collection percentages, as reported, remain above the last reported state average of 97.17%.

Thank you for the opportunity to be of service to you.

Respectfully submitted,



Stan C. Duncan
Tax Collector

wlk
Attachment

PRELIMINARY REPORT FOR FISCAL YEAR 2010-2011

TO: Henderson County Board of Commissioners
FROM: Stan C. Duncan, Tax Collector
DATE: 20 July 2011

In accordance with N.C.G.S. 105-373(a)(1), I respectfully submit the following Report:

Attached to this Report is (1) a list of the persons owning real property whose taxes for 2010 remain unpaid, along with the principal amount owed by each person; and (2) a list of the persons not owning real property whose personal property taxes for 2010 remain unpaid, along with the principal amount owed by each person.

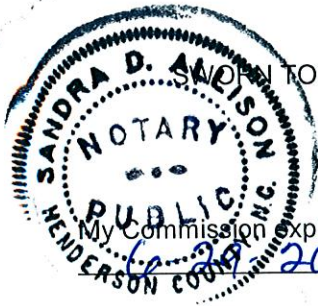
In compliance with N.C.G.S. 105-373(a)(3), attached hereto is a Report entitled "Settlement for Current Taxes for Fiscal Year 2010-2011" dated 20 July 2011 setting forth my full settlement for all taxes in my hands for collection for the fiscal year 2010-2011.

Further, I hereby certify that I have made diligent efforts to collect the taxes due from the persons listed in such a manner that is reasonably necessary.

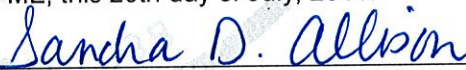
Respectfully submitted,



Stan C. Duncan, Tax Collector



WITNESSED TO AND SUBSCRIBED BEFORE ME, this 20th day of July, 2011.



Notary Public

SETTLEMENT FOR CURRENT TAXES: FY 2010-2011

as of 30 June 2011

CHARGES TO THE TAX COLLECTOR:

Total amount of all taxes placed in the Tax Collector's hands for collection for the year:	Tax & Penalty	Interest
G01 General County	61,312,938.94	136,645.12
Total General County		
<u>Fire Districts:</u>		
F15 Bat Cave	86,105.41	242.27
F01 Blue Ridge	766,333.89	2,359.53
F09 Dana	483,857.08	1,185.85
F03 Edneyville	570,617.07	1,679.88
F04 Etowah-Horse Shoe	963,188.47	1,728.40
F05 Fletcher	784,362.55	2,941.63
F11 Gerton	104,217.29	285.20
F06 Green River	320,790.77	772.21
F08 Mills River	98,182.66	481.62
F07 Mountain Home	1,225,206.79	2,579.89
F12 Raven Rock	145,869.36	243.46
F02 Valley Hill	1,012,066.86	1,445.26
F14 Valley Hill No. 2	139,053.81	534.54
Total Fire Districts	6,699,852.01	16,459.74
<u>Municipal Districts:</u>		
C01 City of Hendersonville	307,612.54	1,667.72
C02 Town of Laurel Park	58,087.37	131.50
C03 City of Saluda	567.76	0.00
C04 Town of Fletcher	176,014.43	823.64
C50 Village of Flat Rock 51	16,212.82	27.06
Village of Flat Rock 52	10,368.15	18.45
Village of Flat Rock 56	3,643.28	3.99
C60 Town of Mills River	45,501.87	189.31
Total Municipal Districts	618,008.22	2,861.67
SUBTOTAL	\$68,630,799.17	\$155,966.53

TOTAL CHARGE TO TAX COLLECTOR **\$68,786,765.70**



CREDITS TO THE TAX COLLECTOR:

All sums deposited by the Tax Collector to the credit of the Taxing Unit:		Deposits	Rebates	Writeoffs	Interest	Outstanding Tax / Liens against Real Property	Outstanding Tax / Liens against Personal Property
G01 General County		59,085,624.34	201,964.36	37,369.74	136,645.12	1,608,430.49	379,550.01
Total General County							
Fire Districts:							
F15 Bat Cave		82,169.96	43.85	68.88	242.27	3,822.72	0.00
F01 Blue Ridge		731,539.74	2,094.29	884.20	2,359.53	31,815.66	0.00
F09 Dana		462,857.23	887.33	557.66	1,185.85	19,554.86	0.00
F03 Edneyville		539,862.02	3,818.44	711.42	1,679.88	26,225.19	0.00
F04 Etowah-Horse Shoe		936,116.72	1,652.10	609.66	1,728.40	24,809.99	0.00
F05 Fletcher		735,296.94	9,507.51	479.55	2,941.63	39,078.55	0.00
F11 Gerton		97,254.65	693.08	45.86	285.20	6,223.70	0.00
F06 Green River		303,872.01	1,787.60	237.33	772.21	14,893.83	0.00
F08 Mills River		90,494.99	571.77	84.84	461.62	7,031.06	0.00
F07 Mountain Home		1,199,937.93	1,554.99	867.18	2,579.89	22,846.69	0.00
F12 Raven Rock		140,827.98	292.03	95.82	243.46	4,653.53	0.00
F02 Valley Hill		985,486.80	3,375.46	575.91	1,445.26	22,628.69	0.00
F14 Valley Hill No. 2		132,762.01	178.74	105.34	534.54	6,007.72	0.00
Total Fire Districts		6,438,478.98	26,457.19	5,323.65	16,459.74	229,592.19	0.00
Municipal Districts:							
C01 City of Hendersonville		266,711.46	5,528.76	754.36	1,667.72	34,617.96	0.00
C02 Town of Laurel Park		54,121.18	1,081.03	89.80	131.50	2,795.36	0.00
C03 City of Saluda		554.42	0.00	2.58	0.00	10.76	0.00
C04 Town of Fletcher		155,771.98	2,259.04	424.98	823.64	17,558.43	0.00
C50 Village of Flat Rock 51		15,640.90	148.34	53.12	27.06	370.46	0.00
Village of Flat Rock 52		9,897.34	146.84	37.60	18.45	286.37	0.00
Village of Flat Rock 56		3,540.75	15.61	4.20	3.99	82.72	0.00
C60 Town of Mills River		41,206.05	571.27	403.58	189.31	3,320.97	0.00
Total Municipal Districts		547,444.08	9,750.89	1,770.22	2,861.67	59,043.03	0.00
TOTAL		\$66,071,547.40	\$238,172.44	\$44,463.61	\$155,966.53	\$1,838,022.68	\$438,593.04

TOTAL CREDITS TO TAX COLLECTOR: \$68,786,765.70

SWORN AND SUBSCRIBED BEFORE ME this 20 day of July, 2011.

My Commission expires 06-29-2012

Respectfully Submitted,

 Stan C. Duncan, Tax Collector

 Sandra D. Allison
 Notary Public



Note: In the instance where a taxable value is released against a property that has a present use value deferment under NCGS 105-277.2 et seq., the system will generate a release or write off against a bill that is not to be charged to the collector until the property faces a disqualifying event. See note below for adjustments that were made due to this situation.

Note: There were releases and write offs against deferred bills (that have been not made active) in the amount of \$0.76 for F09, \$22.33 for F03, and \$6,395.90 for F08 resulting in a difference between the charge and the credits to the respective Fire Districts. There is also a difference of \$0.68 in F03 and \$3.70 in G01 resulting from an erroneous double entry from a release against an RMV tax bill. The Total Write Offs & Releases for F09, F03, F08, and G01 have been corrected to account for these differences.

HENDERSON COUNTY TAX DEPARTMENT
Collector's Office
200 North Grove Street
Suite 66
Hendersonville, NC 28792

Stan C. Duncan
County Assessor & Tax Collector

Phone: 828/697-5595
Fax: 828/698-6153
www.hendersoncountync.org/tc/

Sandy Allison
Administrative Assistant II

20 July 2011

Henderson County Board of Commissioners
Henderson County Historic Courthouse
1 Historic Courthouse Square, Suite 1
Hendersonville, NC 28792

**RE: FY 2010-2011 Progress Report regarding Delinquent Property Tax Collections and
Report on Efforts to Collect Delinquent Taxes**

Dear Henderson County Commissioners:

We are now in the twelfth year of the delinquent tax collection project and would like to take this opportunity to report our progress.

Since the inception of the project in October of 1999, we have collected \$16,493,928.37, in delinquent tax, including interest. Of this amount, \$1,730,995.79 was collected during FY 2010-2011. At the close of this fiscal year, we have collected 99.68% of our prior-year annual tax bills (real estate and listed personal property) and 97.91% of our prior-year motor vehicle tax.¹

The responsibilities of the Delinquent Tax Collections staff include the monitoring and administration of legal remedies used to collect delinquent tax. We have made a great deal of progress this year through the use of these remedies and are pleased to provide detailed information depicting this year's achievements:

In Rem Foreclosures (pursuant to NCGS 105-375). Approximately 85% of Henderson County's tax base is attributable to real estate and improvements thereon.² It stands to reason, therefore, that Henderson County act assertively to preserve this revenue, and our foreclosure program serves to achieve this objective. Henderson County is one of few North Carolina counties that administer tax foreclosures from start to finish without the assistance of outside attorneys. We feel that this system increases efficiency and equates to minimal cost passed on to the taxpayers, who may already be financially distressed.

Henderson County traditionally holds a real estate tax auction annually, as of today (20 July 2011), judgments have been docketed against 12 parcels with a foreclosure sale to be set for October of this year. Prior to instituting a tax foreclosure, the statutes require us to first conduct a title examination of the subject property and send notices via certified mail to all persons having an interest in the property. In addition to the statutory requirements to which we are bound, we attempt to make telephone contact with the taxpayer and in some cases, personally visit the taxpayer and/or the subject property. Additionally, we send pre-foreclosure notices to taxpayers as well as all mortgage holders as disclosed by the title examination. We also post the properties when we docket a judgment against the property. During FY 2010-2011 our office has continued a tracking program for properties that are in pre-foreclosure. Currently, 283 parcels are in this

¹ NCPTS Monthly County Collection Report for period 1 July 2010 to 30 June 2011

² 2007 Tax Base figures as compiled by the Henderson County Assessor

tracking program with a potential collection of \$363,886.29 in taxes. The diligence of our staff has resulted in more taxes being collected and less property having to be foreclosed upon.

Garnishments and Attachments pursuant to NCGS 105-368. The downturn in the economy resulted in an increase in the use of enforced collection remedies. This year (FY 2010-2011) we have served 510 bank account attachments totaling \$815,871.87.³ Our office also uses a Wage Garnishment program. The continued success of this program resulted in 520 Wage Garnishments having to be served totaling \$156,495.52 for FY 2010-2011. Our office has diversified its portfolio of enforced collection remedies to include a Rent Attachment Program. This resulted in 4 Rent Attachments being served for a total of \$19,381.36 in taxes being collected.⁴

NC Debt Setoff Program (pursuant to NCGS Chapter 105A). The North Carolina Debt Setoff Program allows local government to collect outstanding debts by garnishing North Carolina State income tax refunds. Delinquent Tax Collections administers the Debt Setoff Program for the collection of property tax as well as debts owed to other county agencies. During FY 2010-2011, Henderson County collected \$27,915.91 through the use of Debt Setoff.⁵ This is a decrease of almost \$70,000 over last fiscal year. This can be attributed to two factors. (1) Due to the economic downturn fewer citizens are receiving State income tax refunds and (2) the State of North Carolina has withheld tax refunds from its citizens resulting in a delay of receiving funds.

Payment Arrangements. Last year, our office provided a Pre Authorized Debit program, allowing taxpayers to have one or multiple debits from their financial accounts prior to the tax bill becoming delinquent which has in turn reduced the number of payment arrangements needed by taxpayers. We encourage taxpayers to enter into payment agreements prior to taxes becoming delinquent. During FY 2010-2011, Delinquent Tax Collections entered into 48 payment agreements totaling \$31,390.03 in tax revenue.⁶

Escheats. The unclaimed cash program through the North Carolina State Treasurer's Office supplemented our collection efforts this past fiscal year. 646 Escheat Attachments were served collecting \$63,569.34 in unclaimed funds toward payment of delinquent tax debts. When all other options have failed; sometimes unclaimed cash can pay all or a portion of a taxpayer's indebtedness. Escheats are a shot in the dark in most cases; therefore, it is reserved as a last resort in delinquent collections.

Bankruptcy. As part of an effective collection program, it is important to keep abreast of the statutes and procedural issues pertaining to bankruptcy. Proofs of Claim must be filed in a timely manner when appropriate and tax bills involved in an active bankruptcy case must be carefully monitored and segregated to avoid violation of the automatic stay imposed by the Bankruptcy Court. Presently, there are 655 tax bills amounting to \$198,571.21⁷ that are involved in active bankruptcy cases. This is a slight increase over last fiscal year. As depicted in the following chart of North Carolina Bankruptcy filings, during 2006, there was a significant drop in the number of cases filed in North Carolina's Western District Court. Only 5,108 cases were filed in North Carolina Bankruptcy Court's Western District of which Henderson County is a part. This drop can be attributed to the 17 October 2005 enactment of the Bankruptcy Abuse and Protection Act which was designed to limit frivolous bankruptcy filings. This also represents a 10 year low in the number of bankruptcy filings. The number of bankruptcies filed during 2010 was slightly higher than 2009 with 8,779 cases. This continues a three year upswing in the number of bankruptcies and can be attributed to the economic downturn.

³ NCPTS Legal Action Report for period 1 July 2010 to 30 June 2011

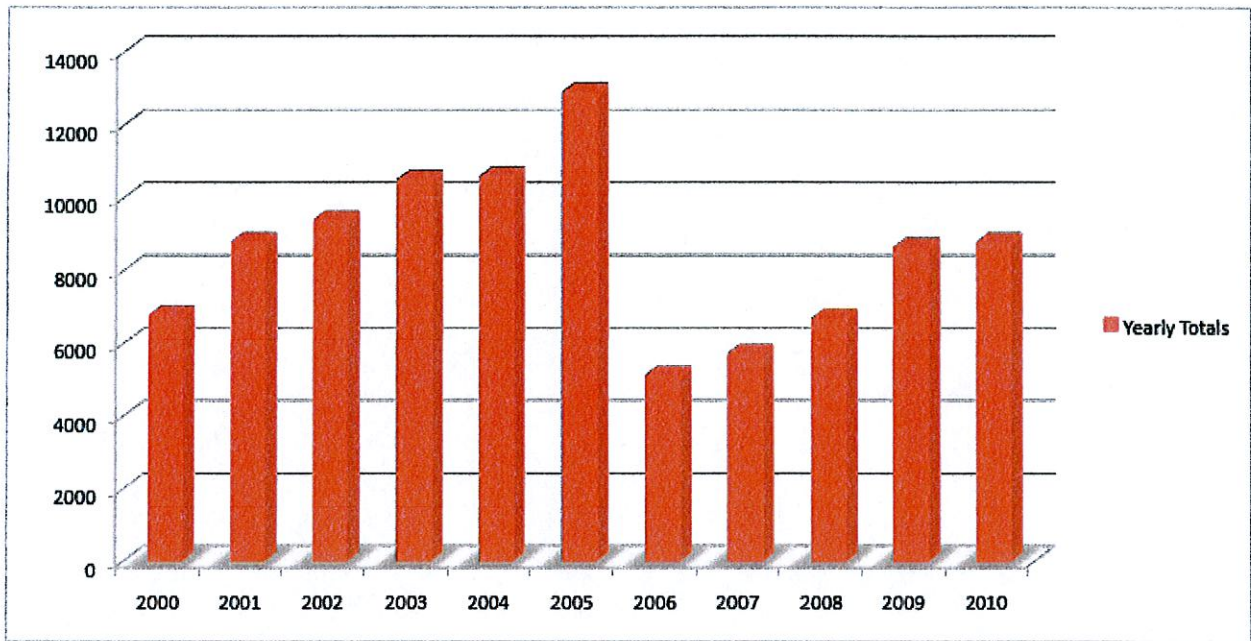
⁴ NCPTS Legal Action Report for period 1 July 2010 to 30 June 2011

⁵ NC Debt Setoff Detail Report (as provided by FiveStar Computing) for period 1 July 2010 to 30 June 2011

⁶ NCPTS Payment Arrangement Summary report for period 1 July 2010 to 30 June 2011

⁷ Query of NCPTS data containing Bankruptcy flags as prepared by the IT Department as of 1 July 2011

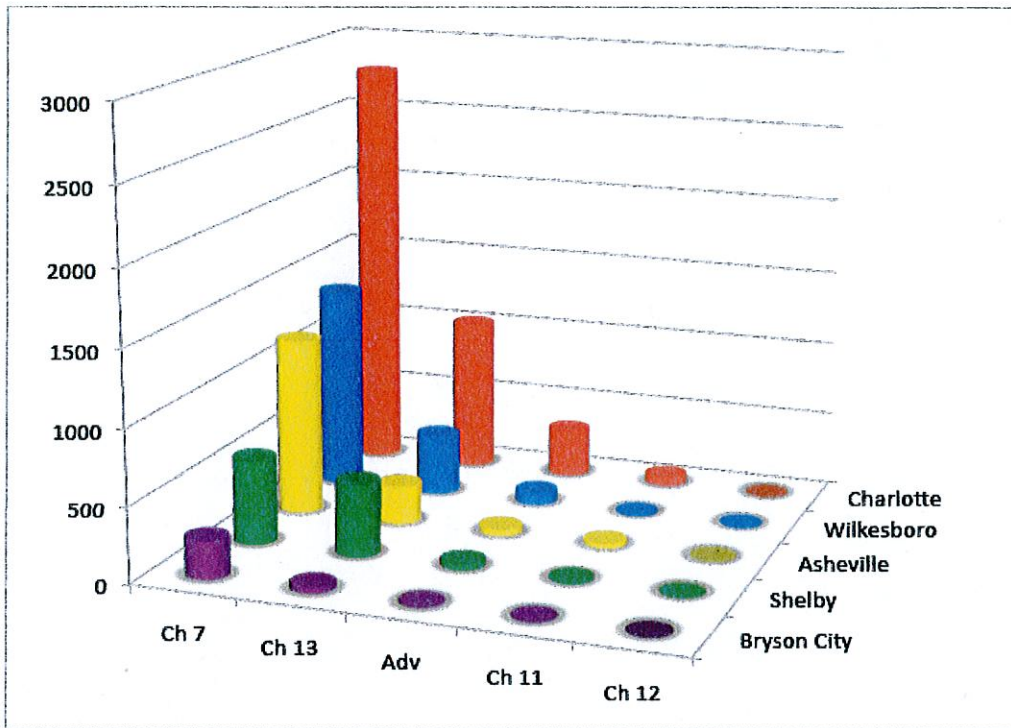
TEN YEAR COMPARISON FOR ANNUAL BANKRUPTCY FILINGS



2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010
6761	8777	9373	10494	10585	12897	5108	5706	6584	8640	8779

The second chart demonstrates that of the 8,779 bankruptcies filed in the Western District, 1,518 were filed in the Asheville Division. The chart also shows the breakdown of the number of each type of bankruptcy that was filed during 2010.

2010 BANKRUPTCY FILINGS BY DIVISIONAL OFFICE



	Ch 7	Ch 13	Adv	Ch 11	Ch 12	
Bryson City	253	41	7	3	0	
Shelby	569	490	42	10	1	
Asheville	1185	260	44	29	0	
Wilkesboro	1357	405	80	9	2	
Charlotte	2771	1024	318	60	0	

Our most difficult collections remain in the area of motor vehicle tax. The total prior-year (i.e., 1999-2009) sum of outstanding motor vehicle tax is \$1,190,238.00, which represents 27.80% of the total outstanding delinquent tax.⁸

In closing, the progress relating to delinquent tax collections has truly been a team effort based on hard work and solid dedication. Thank you for the opportunity to be of service to you.

Respectfully submitted,

William Lee King
 Delinquent Tax Collector

cc: Stan Duncan, County Assessor/Tax Collector, Carey McLelland, Finance Director

⁸ NCPTS Monthly County Collection report for period 1 July 2010 to 30 June 2011

2010-2011 Delinquent Property Tax Collections

PRIOR YEARS (2000-2009) TAX COLLECTED FOR GENERAL COUNTY:

TAX YEAR	TOTAL COUNTY LEVY CREDIT (Tax + Late List Penalties - Rebates and Releases)			ACCRUED INTEREST COLLECTED + COSTS COLLECTED			TOTAL COUNTY CASH COLLECTED (Includes Tax, Penalties, Interest & Costs)			YEAR END COUNTY LEVY DUE			YEAR END COLLECTION PERCENTAGE		
	Regular	Deferred	DMV	Regular	Deferred	DMV	Regular	Deferred	DMV	Regular	Deferred	DMV	Regular	Deferred	DMV
2009	796,411.69	9,135.70	262,115.76	112,493.94	1,006.95	24,689.89	1,025,017.90	10,279.63	342,782.47	514,194.81	196.46	76,213.11	99.10	98.74	98.01
2008	1,014,454.71	8,439.44	14,923.54	23,164.28	1,862.07	3,612.33	1,099,949.83	10,101.51	18,300.38	218,403.50	196.46	83,040.20	99.61	99.01	98.00
2007	28,952.82	5,397.08	8,962.99	8,675.47	1,458.72	3,532.12	34,551.93	6,855.80	12,494.35	178,344.87	134.44	98,382.06	99.67	99.67	97.89
2006	14,242.11	72.32	6,921.24	5,495.23	26.94	3,887.54	17,765.83	99.26	10,803.74	205,497.40	0.00	105,454.70	99.58	100.00	9.87
2005	7,975.07	65.92	4,943.02	3,456.39	30.49	3,048.35	10,629.51	96.41	7,891.37	99,915.03	1,396.17	83,299.66	99.77	97.74	98.11
2004	4,465.12	60.80	3,187.19	2,551.96	33.59	2,183.75	6,312.64	94.39	5,283.55	62,915.92	265.80	76,563.03	99.84	99.84	98.05
2003	3,454.78	0.00	7,388.68	1,900.36	0.00	6,555.47	4,368.74	0.00	13,943.19	64,673.07	0.00	108,269.52	99.83	100.00	98.05
2002	3,816.59	0.00	4,808.12	2,775.00	0.00	5,284.11	6,045.28	0.00	10,049.33	78,269.78	0.00	98,770.17	99.77	100.00	97.58
2001	3,277.54	0.00	4,109.95	2,331.51	0.00	4,799.57	5,180.46	0.00	8,909.52	57,610.66	0.00	80,695.54	99.82	100.00	97.92
2000/PRIOR	7,573.93	0.00	14,153.59	9,633.84	0.00	22,981.49	15,966.22	0.00	37,132.55	439,356.45	0.00	511,776.66	99.77	100.00	97.83
TOTAL:	971,624.36	23,171.28	331,514.08	172,467.98	4,218.76	80,594.62	1,235,778.34	27,527.00	467,690.45	1,919,181.49	2,189.33	1,322,464.65			

PRIOR YEARS (2000-2009) TAX COLLECTED FOR MUNICIPALITIES:


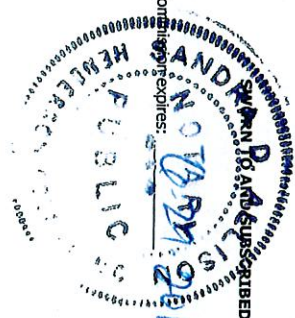
MUNICIPALITY	TOTAL CITY LEVY CREDIT (Tax + Late List Penalties - Rebates and Releases)			ACCRUED INTEREST COLLECTED + COSTS COLLECTED			TOTAL CITY CASH COLLECTED (Includes Tax, Penalties, Interest & Costs)			YEAR END CITY LEVY DUE			YEAR END COLLECTION PERCENTAGE		
	Regular	Deferred	DMV	Regular	Deferred	DMV	Regular	Deferred	DMV	Regular	Deferred	DMV	Regular	Deferred	DMV
Hendersonville	0.00	0.00	31,636.05	0.00	0.00	5,517.06	0.00	0.00	35,743.15	0.00	0.00	182,729.09	0.00	0.00	96.61
Laurel Park	0.00	0.00	1,986.24	0.00	0.00	281.84	0.00	0.00	1,985.85	0.00	0.00	8,992.73	0.00	0.00	99.03
Saluda	0.00	0.00	9.38	0.00	0.00	2.02	0.00	0.00	11.40	0.00	0.00	115.00	0.00	0.00	98.93
Fletcher	0.00	0.00	14,074.12	0.00	0.00	1,746.19	0.00	0.00	15,531.83	0.00	0.00	30,457.53	0.00	0.00	98.19
Flat Rock S1			392.24			25.75			407.45			720.56			99.12
Flat Rock S2			227.05			14.96			226.43			166.77			99.68
Flat Rock S6			44.35			1.55			31.03			27.40			99.82
Mills River	0.00	0.00	3,766.84	0.00	0.00	368.98	0.00	0.00	4,071.49	0.00	0.00	4,303.05	0.00	0.00	98.45
TOTAL:	0.00	0.00	52,146.27	0.00	0.00	7,958.39	0.00	0.00	57,808.63	0.00	0.00	227,472.13			

PRIOR YEARS (2000-2009) TAX COLLECTED FOR FIRE DISTRICTS:

FIRE DISTRICT	TOTAL SPECIAL DISTRICT LEVY CREDIT (Tax + Late List Penalties - Rebates and Releases)			ACCRUED INTEREST COLLECTED + COSTS COLLECTED	TOTAL SPECIAL DISTRICT CASH COLLECTED (includes Tax, Penalties, Interest & Costs)	YEAR END SPECIAL DISTRICT LEVY DUE	YEAR END COLLECTION PERCENTAGE
	Regular	Deferred	DMV				
Bal Cave	2,877.05	0.00	387.80	0.00	438.78	0.00	0.00
Blue Ridge	13,564.25	0.00	8,913.02	0.00	3,986.35	0.00	99.49
Dana	10,157.58	494.19	6,064.77	0.00	2,570.35	0.00	99.34
Echeyville	9,495.56	792.54	6,488.72	0.00	2,796.73	0.00	99.19
Etowah/HS	23,614.72	564.80	4,987.05	0.00	3,601.30	0.00	99.08
Fletcher	12,916.21	56.34	9,618.24	0.00	2,868.84	0.00	99.49
Geiton	5,046.44	0.00	270.65	0.00	612.81	0.00	99.60
Green River	7,790.31	1,024.47	1,994.45	0.00	1,609.44	0.00	99.41
Mills River	1,063.88	583.30	733.57	0.00	605.70	0.00	99.50
Min Home	14,473.39	0.00	7,926.92	0.00	3,623.16	0.00	99.54
Raven Rock	1,700.43	0.00	590.54	0.00	310.83	0.00	99.61
Valley Hill #1	11,509.11	0.00	4,714.24	0.00	2,045.26	0.00	99.77
Valley Hill #2	3,256.65	0.00	713.47	0.00	547.30	0.00	99.63
TOTAL:	117,465.58	3,515.64	53,413.44	0.00	25,617.35	0.00	99.49

TOTAL PROPERTY TAX COLLECTED FOR YEARS 2000-2009:							
	TOTAL LEVY CREDIT		ACCRUED INTEREST COLLECTED + COSTS	TOTAL CASH COLLECTED	YEAR END LEVY DUE	YEAR END COLLECTION PERCENTAGE	
	Regular	Deferred				Regular	Deferred
General County	1,326,309.70	52,146.27	257,241.36	1,730,995.79	3,243,835.47	99.68	99.61
Municipalities	174,394.66	7,958.35	25,617.35	57,808.63	227,472.13	99.49	97.91
TOTAL:	1,552,850.63	290,617.06	290,617.06	1,990,824.29	3,849,406.64		

- Notes:
- (1) Differences in the sum of Levy Credit + Accrued Interest and Total Cash Collected is attributable to Rebates (aka Releases) and Refunds
 - (2) The Year End Levy Due columns include amounts due for years prior to 1999 which are legally unenforceable.
 - (3) With regard to Fire District entries, REG, DEF and DMV breakdowns on accrued interest and collection percentages were not available due to the formatting of the Special District Collection report

Respectfully Submitted,

 Stan C. Duncan, Tax Collector
 My Commission Expires: NOV 05 2012

 Sandra D. Albin
 Notary Public

Extract of Minutes of a regular meeting of the Board of Commissioners of the County of Henderson, North Carolina, was duly held on July 20, 2011 at 9:00 a.m. in the Commissioners' Meeting Room, Henderson County Historic Courthouse, 1 Historic Courthouse Square, Hendersonville, North Carolina. Chairman J. Michael Edney, presided.

* * *

The following members were present:

Chairman J. Michael Edney; Vice Chairman Thomas H. Thompson, Jr.; Commissioner Charlie Messer; Commissioner Larry Young; Commissioner William O'Connor.

The following members were absent:

None

Also present:

County Manager Steve Wyatt; Assistant County Manager Selena Coffey; Clerk to the Board Teresa Wilson; Finance Manager J. Carey McLelland; County Attorney Charles Russell Burrell.

* * *

Commissioner Tommy Thompson moved that the following resolution (the "Resolution"), a copy of which was available with the Board and which was read by title:

RESOLUTION OF THE COUNTY OF HENDERSON, NORTH CAROLINA DECLARING THE INTENT OF THE COUNTY OF HENDERSON, NORTH CAROLINA TO REIMBURSE ITSELF FOR CAPITAL EXPENDITURES INCURRED IN CONNECTION WITH THE ACQUISITION OF A BUILDING FOR USE BY MARGARET R. PARDEE HOSPITAL FROM THE PROCEEDS OF CERTAIN TAX-EXEMPT OBLIGATIONS TO BE EXECUTED AND DELIVERED WITHIN THE NEXT EIGHTEEN MONTHS

WHEREAS, the Board of Commissioners of the County of Henderson, North Carolina ("County") has determined that it is in the best interests of County to acquire a building, formerly owned by Hendersonville Hematology and Oncology physicians, for use by Margaret R. Pardee Hospital (the "Project");

WHEREAS, the County presently intends, at one time or from time to time, to finance all or a portion of the costs of the Project with proceeds of tax-exempt obligations and reasonably expects to execute and deliver its tax-exempt obligations (the "Obligations") to finance, or to reimburse itself for, all or a portion of the costs of the Project; and

WHEREAS, the County desires to proceed with the Project and will incur and pay certain expenditures in connection with the Project prior to the date of execution and delivery of the Obligations (the "Original Expenditures"), such Original Expenditures to be paid for originally from a source other than the proceeds of the Obligations, and the County intends, and reasonably expects, to be reimbursed for such Original Expenditures from a portion of the proceeds of the Obligations to be executed and delivered at a date occurring after the dates of such Original Expenditures;

NOW, THEREFORE, BE IT RESOLVED by the Board of Commissioners of the County of Henderson, North Carolina as follows:

Section 1. **Official Declaration of Intent.** The County presently intends, and reasonably expects, to reimburse itself for the Original Expenditures incurred and paid by the County on or after the date occurring 60 days prior to the date of adoption of this Resolution from a portion of the proceeds of the Obligations. The County reasonably expects to execute and deliver the Obligations to finance all or a portion of the costs of the Project and the maximum principal amount of Obligations expected to be executed and delivered by County to pay for all or a portion of the costs of the Project is \$1,300,000.

Section 2. **Compliance with Regulations.** The County adopts this Resolution as a declaration of official intent under Section 1.150-2 of the Treasury Regulations promulgated under Section 103 of the Internal Revenue Code of 1986, as amended, to evidence the County's intent to reimburse itself for the Original Expenditures from proceeds of the Obligations.

Section 3. **Itemization of Capital Expenditures.** The Finance Officer of the County, with advice from special counsel, is hereby authorized, directed and designated to act on behalf of the County in determining and itemizing all of the Original Expenditures incurred and paid by the County in connection with the Project during the period commencing on the date occurring 60 days prior to the date of adoption of this Resolution and ending on the date of execution and delivery of the Obligations.

Section 4. **Effective Date.** This Resolution is effective immediately on the date of its adoption.

On motion of Commissioner Tommy Thompson, the foregoing resolution entitled **"RESOLUTION OF THE COUNTY OF HENDERSON, NORTH CAROLINA DECLARING THE INTENT OF THE COUNTY OF HENDERSON, NORTH CAROLINA TO REIMBURSE ITSELF FOR CAPITAL EXPENDITURES INCURRED IN CONNECTION WITH THE ACQUISITION OF A BUILDING FOR USE BY MARGARET R. PARDEE HOSPITAL FROM THE PROCEEDS OF CERTAIN TAX-EXEMPT OBLIGATIONS TO BE EXECUTED AND WITHIN THE NEXT EIGHTEEN MONTHS"** was duly adopted by the following vote:

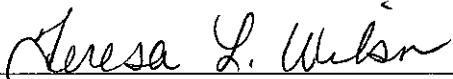
AYES:

NAYS:

STATE OF NORTH CAROLINA)
)
COUNTY OF HENDERSON) ss:

I, *Teresa Wilson*, Clerk to the Board of Commissioners of the County of Henderson, North Carolina, ***DO HEREBY CERTIFY*** that the foregoing is a true and exact copy of a resolution entitled **“RESOLUTION OF THE COUNTY OF HENDERSON, NORTH CAROLINA DECLARING THE INTENT OF THE COUNTY OF HENDERSON, NORTH CAROLINA TO REIMBURSE ITSELF FOR CAPITAL EXPENDITURES INCURRED IN CONNECTION WITH THE ACQUISITION OF A BUILDING FOR USE BY MARGARET R. PARDEE HOSPITAL FROM THE PROCEEDS OF CERTAIN TAX-EXEMPT OBLIGATIONS TO BE EXECUTED AND DELIVERED WITHIN THE NEXT EIGHTEEN MONTHS”** adopted by the Board of Commissioners of the County of Henderson, North Carolina, at a meeting held on the 20th day of July, 2011.

WITNESS my hand and the corporate seal of the County of Henderson, North Carolina, this the 20th day of July, 2011.



Teresa Wilson
Clerk to the Board
County of Henderson, North Carolina

HENDERSON COUNTY

PUBLIC RECORDS DISPOSAL REQUEST AND DESTRUCTION LOG

(Revised March 13, 2002)

DEPARTMENT: Tax Department - Assessor

	RECORD TITLE & DESCRIPTION, INCLUSIVE DATES, & QUANTITY	RECORDS WILL BE		RECORDS RETENTION SECTION	IF APPROVED, DATE DESTROYED
		DESTROYED	*DUPLICATED		
1.	2011 Reappraisal Notices - undeliverable returned mail		Forms have been scanned & attached to the parcel record	Standard 6 Item # 2	
2.	2011 Listing Forms - undeliverable returned mail		Forms have been scanned & attached to the parcel record.	Standard 6 Item # 2	

*If duplication is required, indicate method.

Approval is requested for the records listed above to be destroyed in accordance with the provisions of G.S. 121 and 132. The period for retention of these records, as prescribed by the North Carolina Department of Cultural Resources, has expired; **OR** where the period for retention has not expired, the original records have been duplicated on microfilm, microfiche, data processing or word processing equipment, with the understanding that said duplication shall be maintained for the specified period of retention. **NONE** of the original records listed above have been scheduled for permanent preservation by the North Carolina Department of Cultural Resources.

[Signature]
Department Head

6 July 2011
Date

Submitted to the Henderson County Board of Commissioners. The Board:

APPROVED
DISAPPROVED

the destruction/duplication of the above records and such approval/disapproval has been entered into the official minutes of the Board of Commissioners meeting held on the 20th day of July, 2011.

[Signature]
Clerk to the Board

STANDARD-6. PROGRAM OPERATIONAL RECORDS: PROPERTY APPRAISAL RECORDS. Records received and created by county tax offices necessary to meet all statutory requirements.

STANDARD-6. PROGRAM RECORDS: PROPERTY APPRAISAL RECORDS			
ITEM #	RECORD SERIES TITLE	DISPOSITION INSTRUCTIONS	CITATION
1.	AGRICULTURAL, HORTICULTURAL, AND FORESTLAND DEFERRED TAXES	Destroy in office after 10 years or two revaluation cycles, whichever occurs first.	G.S. 105-277.6
2.	APPRAISAL MONITORING RECORDS Records used to discover unlisted and under-appraised real and personal property during non-revaluation years. Includes field notes, correspondence to and from property owners, and similar records documenting changes in parcel features and characteristics used to update property records.	a) Destroy in office records concerning real property after 10 years or two revaluation cycles, whichever occurs first. b) Destroy in office records concerning personal property after two revaluation cycles. See also REVALUATION RECORDS item 16, page 35.	G.S. 105-287
3.	BOARD OF EQUALIZATION AND REVIEW (APPEALS FILE) Records associated with appeals to the Board of Equalization and Review. Includes appeal letters, hearing notices, listing information, affidavits, staff recommendations and final actions.	a) Destroy in office 4 years after final settlement appeals concerning real property. b) Destroy in office 1 year after final settlement appeals concerning personal property and motor vehicles.	G.S. 105-322 G.S. 105-323 G.S. 105-325
4.	BOARD OF EQUALIZATION AND REVIEW (MINUTES AND ATTACHMENTS) Official minutes summarizing each appeal heard before the Board of Equalization and Review.	Retain in office permanently. See the Microfilm section on page viii for instructions on microfilming.	G.S. 105-322
5.	LOCAL GOVERNMENT COMMISSION REPORTS (DEPARTMENT OF REVENUE)	Destroy in office after 3 years.	

Page **33** of the Records Retention & Disposition Schedule - County Tax Administration - Issued by: NC Dept. of Cultural Resources, Division of Historical Resources, Archives & Records Section Government Records Branch; published April 1, 2004

* Records may be disposed of following minimum retention period only if released from audits or other official action (excluding litigation). If applicable, see LITIGATION CASE RECORDS item 11, page 17.

HENDERSON COUNTY

PUBLIC RECORDS DISPOSAL REQUEST AND DESTRUCTION LOG

(Revised March 13, 2002)

DEPARTMENT: Tax Department - Assessor

RECORD TITLE & DESCRIPTION, INCLUSIVE DATES, & QUANTITY	RECORDS WILL BE		RECORDS RETENTION SECTION	IF APPROVED, DATE DESTROYED
	DESTROYED	*DUPLICATED		
2011 Real Property Listing Forms		Forms have been scanned and attached to the parcel record as a document	Standard Item # 2	6

*If duplication is required, indicate method.

Approval is requested for the records listed above to be destroyed in accordance with the provisions of G.S. 121 and 132. The period for retention of these records, as prescribed by the North Carolina Department of Cultural Resources, has expired; **OR** where the period for retention has not expired, the original records have been duplicated on microfilm, microfiche, data processing or word processing equipment, with the understanding that said duplication shall be maintained for the specified period of retention. **NONE** of the original records listed above have been scheduled for permanent preservation by the North Carolina Department of Cultural Resources.

Shirley C. Anderson
Department Head

6 July 2011
Date

Submitted to the Henderson County Board of Commissioners. The Board:

APPROVED
DISAPPROVED

the destruction/duplication of the above records and such approval/disapproval has been entered into the official minutes of the Board of Commissioners meeting held on the 20th day of July, 2011.

Alicia L. Wilson
Clerk to the Board

STANDARD-6. PROGRAM OPERATIONAL RECORDS: PROPERTY APPRAISAL RECORDS. Records received and created by county tax offices necessary to meet all statutory requirements.

STANDARD-6. PROGRAM RECORDS: PROPERTY APPRAISAL RECORDS			
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3.	BOARD OF EQUALIZATION AND REVIEW (APPEALS FILE) Records associated with appeals to the Board of Equalization and Review. Includes appeal letters, hearing notices, listing information, affidavits, staff recommendations and final actions.	a) Destroy in office 4 years after final settlement appeals concerning real property. b) Destroy in office 1 year after final settlement appeals concerning personal property and motor vehicles.	G.S. 105-322 G.S. 105-323 G.S. 105-325
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NC Dept. of Cultural Resources, Division of Historical Resources, Archives & Records Section
Government Records Branch; published April 1, 2004

* Records may be disposed of following minimum retention period only if released from audits or other official action (excluding litigation). If applicable, see LITIGATION CASE RECORDS item 11, page 17.

MANAGEMENT SERVICES AGREEMENT

THIS MANAGEMENT SERVICES AGREEMENT ("Agreement") is made and entered into by and between Henderson County Hospital Corporation d/b/a Margaret R. Pardee Memorial Hospital ("HCHC"), a North Carolina not for profit corporation, and the University of North Carolina at Chapel Hill Hospitals ("UNCH"), effective as of June 22, 2011 (the "Effective Date").

WITNESSETH:

WHEREAS, HCHC was created by Henderson County to provide for the operation of a community hospital in Henderson County, North Carolina doing business as Margaret Pardee R. Memorial Hospital ("Pardee Hospital"), that is dedicated to serving the health care needs of Henderson County citizens;

WHEREAS, Henderson County is the sole member of HCHC, which leases and operates Pardee Hospital and whose Board of Directors is appointed solely by the Henderson County Board of Commissioners;

WHEREAS, UNCH is a component of the University of North Carolina Health Care System, whose mission as mandated by the State of North Carolina is to provide care to all North Carolinians, to educate physicians and other health care providers, and to render other services designed to promote the health and well-being of North Carolina's citizens;

WHEREAS, the missions of HCHC and UNCH are consistent and compatible;

WHEREAS, HCHC and UNCH desire to work together on health care programs over a period of several years serving the citizens of Henderson County and the surrounding region;

WHEREAS, HCHC has a need for certain management services and desires to arrange for such services to be provided by UNCH, and UNCH is willing to provide such services, under the terms and conditions of this Agreement.

NOW THEREFORE, in consideration of the foregoing and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. ENGAGEMENT

(a) Services of UNCH. HCHC hereby engages UNCH to provide those services set forth on Exhibit A, attached hereto and incorporated into the terms of this Agreement (the "Services"). UNCH shall apply reasonable business judgment in making decisions regarding the Services. UNCH shall have all rights and powers to conduct and effectively manage the day to day operations of Pardee Hospital and HCHC's affiliated operations, consistent with the authority granted pursuant to this Agreement. For purposes of this Agreement, Pardee Memorial Hospital Foundation Inc. shall not be treated as an affiliated

operation of HCHC. UNCH hereby agrees that, throughout the term of this Agreement, the administration of HCHC operations shall comply with applicable laws and contractual requirements to allow UNCH to perform all Services contemplated under this Agreement. HCHC agrees to provide to UNCH all of its applicable policies and procedures, as well as any future amendments, to enable UNCH to carry out its duties under this Agreement. UNCH agrees to abide by such policies and procedures, to the extent provided to UNCH by HCHC, and to the extent such policies and procedures are consistent with applicable laws and regulations. UNCH shall make recommendations to the HCHC Board of Directors as needed regarding such policies and procedures, or any other matter related to HCHC operations. Notwithstanding anything stated herein, UNCH shall not be obligated to perform any Services if HCHC breaches this Agreement.

(b) Relationship Between HCHC and Henderson County. UNCH and HCHC specifically acknowledge the existence of and agree to abide by the provisions of Article VIII of the HCHC Articles of Incorporation. Consistent with Article VIII, the parties will, in a manner reasonably designed to allow adequate time for Henderson County's Board of Commissioners to express its views, keep the Henderson County Board of Commissioners informed of all matters not in the ordinary course of business that can reasonably be expected to have a substantial and material impact on the financial performance or operations of HCHC.

(c) Time and Attention to Duties. UNCH shall devote the time and attention of its personnel, as UNCH and HCHC mutually shall determine to be reasonably necessary, to the faithful performance of UNCH's duties hereunder. UNCH may engage any other person or entity to perform any particular Service and may delegate any of its responsibilities hereunder, subject in each case to the conditions and limitations set forth herein.

(d) Records and Reports. UNCH shall have the following responsibilities with respect to HCHC's records and reports:

(i) UNCH shall arrange for the establishment and maintenance of a comprehensive system of records, books and accounts for HCHC, in a manner conforming to the directives of all applicable third-party payors. These books and business records shall be considered to be the property of HCHC, however all operating protocols, information systems, and other proprietary business systems or information developed or provided by UNCH shall remain the exclusive property of UNCH. All records, books and accounts will be subject to examination and copying at reasonable hours by any authorized representatives of HCHC. To the extent information is maintained at another site, all books and records shall be available at HCHC's offices upon request.

(ii) Both parties shall furnish or cause to be furnished to the other such information as reasonably may be requested from time to time with respect to HCHC's financial, physical, or operational condition.

(iii) UNCH shall furnish or cause to be furnished to HCHC monthly operating, management, and financial statements within twenty (20) days after the end of each month, and information for quarterly tax returns within thirty (30) days after the end of each

quarter, unless delayed by circumstances beyond its control. The parties agree that, during a mutually acceptable transition period, the financial reports may not be available for a period of thirty (30) days after the end of the month. UNCH's provision of year-end financial statements shall be subject to reasonable timeframes established by HCHC and agreeable to UNCH, whose agreement shall not be unreasonably withheld.

(iv) UNCH shall prepare or cause to be prepared for HCHC, in a timely manner, proposed budgets and internal financial reports and shall supervise the preparation and timely submission of such other reports or statements as may be required by city, state and federal statutes, regulations and requirements.

(v) Any billing and collections conducted by UNCH on behalf of HCHC shall be conducted under the name of HCHC doing business as Pardee Hospital, or such other "doing business as" name as HCHC may utilize in regard to its ancillary operations.

(e) Employees. UNCH shall assist HCHC in determining qualifications and duties of the personnel to be regularly employed in the management and operation of HCHC, including but not limited to the personnel set forth in Exhibit B, attached hereto and incorporated into the terms of this Agreement. All personnel listed in Exhibit B shall be employees of UNCH and shall be hired, paid, and discharged by UNCH, unless otherwise stated in Exhibit B. Regardless of whether the personnel listed in Exhibit B are employees of UNCH or HCHC, the terms of employment of such personnel, including compensation and assignment at HCHC, shall be at the continuing pleasure of the HCHC Board of Directors. In the event HCHC terminates this Agreement prior to the end of a term, HCHC agrees to reimburse UNCH for any severance expenses and recruitment costs incurred by UNCH with respect to the personnel listed in Exhibit B due to such termination. The additional terms of Exhibit B shall apply to such personnel.

(f) Control over Operations. The HCHC Board of Directors will retain control and direction of its assets and operations, including Pardee Hospital, and this Agreement shall not constitute a delegation of any powers, duties or responsibilities vested in the HCHC Board of Directors. Notwithstanding any other provision in this Agreement, HCHC shall remain responsible for compliance with respect to all applicable provisions of federal, state and local laws, rules, regulations and ordinances and standards of accreditation, including but not limited to those regarding the establishment and operation of health care facilities in North Carolina, and UNCH shall assist HCHC with respect to these obligations. HCHC, acting through its officers, retains the ultimate authority over the overall policy, operation and assets of its facilities and their operation. HCHC shall remain the holder of all of its licenses, contracts, and accreditation certificates. The Chief Executive Officer (CEO) employed by UNCH, but assigned to Pardee Hospital, will report to the HCHC Board of Directors, with oversight provided by the President of UNCH. The HCHC Board of Directors shall have authority to issue directives to the CEO and to place limitations on the authority of the CEO, in consultation with the President of UNCH. The Chief Financial Officer (CFO) employed by Pardee Hospital will report to the CEO of Pardee Hospital, with oversight by the President and Chief Financial Officer of UNCH. The scope of, and limitations on, the duties of the CEO and CFO will be mutually agreed upon by the HCHC Board of Directors and UNCH. UNCH shall be entitled to rely on communications from the Chairperson of the HCHC Board of Directors and the Chairperson's designees regarding

HCHC operations. HCHC will reasonably cooperate with UNCH in the administration of HCHC operations.

(g) Joint Planning Session and Oversight. UNCH, HCHC, and the Henderson County Board of Commissioners shall meet at least bi-annually in joint session to discuss matters related to Pardee's fiscal operations, future operations, and other issues that may be material to HCHC and the Henderson County Board of Commissioners.

(h) Expenses Related to Services. Reasonable out-of-pocket business expenses incurred by personnel of UNCH set forth in Exhibit B in performing Services hereunder shall be subject to HCHC's policies and shall be paid directly by UNCH and reimbursed to UNCH by HCHC pursuant to Exhibit C. HCHC shall be responsible for all costs and expenses associated with the operation of HCHC's facilities and business, and UNCH shall only be responsible to pay costs and expenses on behalf of HCHC that are specifically set forth in this Agreement.

(i) Force Majeure. Neither party shall be obligated to perform any of its obligations pursuant to this Agreement that it is prevented from performing by law, act of God, war, strike, labor unrest, unavailability of supplies or services, or similar events beyond the party's reasonable control, for the period of time the applicable event continues, but not including any obligation it is prevented from performing due to the party's own negligence, malfeasance, or where non-performance is caused by the usual and natural consequences of external forces or where the intervening circumstances are specifically contemplated. To the extent practicable, the party prevented from performing any obligations pursuant to this subsection (i) shall provide notice to the other party immediately upon the happening of such event that prevents performance, including a list of the obligations the party will be prevented from performing and the anticipated timeframe in which the party will be prevented from performing.

(j) Incidental Services. UNCH shall perform for and on behalf of HCHC such other services incidental to the Services or as may from time to time be reasonably necessary in connection with the orderly and successful operation of Pardee Hospital.

(k) Independent Contractor. Nothing herein shall be construed as giving HCHC control over, or the right to control, the judgment or actions of UNCH or individuals performing services on behalf of UNCH with respect to Services rendered hereunder, and UNCH shall at all times act as and be deemed to be an independent contractor, subject to the contractual conditions, obligations and limitations set forth herein. This Agreement shall not be construed as creating a partnership or joint venture. Except as explicitly set forth herein, neither party shall hold itself out as or act as an agent of the other party, nor have the power to obligate the other party with respect to third parties in any way; provided, however, that the personnel listed in Exhibit B shall have such powers as shall be delegated to them by HCHC.

Nothing herein shall be construed as giving UNCH control over or any right to control the governance of HCHC and the HCHC Board of Directors, including but not limited to the independent actions of the HCHC Board of Directors to adopt and apply Bylaws, oversee the

medical staff at Pardee Hospital and make all decisions related to credentialing of providers at Pardee Hospital and other HCHC facilities.

(1) Disclosure of Conflicts of Interest; Business Opportunities. UNCH shall identify to HCHC in writing any contractual or financial relationships of UNCH and its affiliates with any hospitals or health care providers who provide services in competition with or in overlapping service areas with HCHC that might create a conflict of interest in UNCH's provision of the Services identified herein (a "Conflict of Interest Transaction"). UNCH shall not enter into any Conflict of Interest Transactions during the term of this Agreement without the prior written consent of HCHC. UNCH shall present to HCHC for consideration any educational or health care business opportunities in the HCHC service area that are identified by UNCH, and UNCH shall facilitate pursuit of any such opportunities by HCHC if so requested by HCHC, consistent with the terms of this Agreement. Such opportunities may include, without limitation, educational opportunities such as participation in the development of a medical school in western North Carolina, and health care business opportunities, such as joint ventures with other health care providers.

2. COMPENSATION

In consideration of providing the Services set forth in Exhibit A and the personnel set forth in Exhibit B, HCHC shall pay to UNCH those amounts set forth in Exhibit C, attached hereto and incorporated into the terms of this Agreement, in accordance with the provisions therein.

3. LICENSE TO USE NAME/LOGO

UNCH, on its behalf and on behalf of The University of North Carolina Health Care System, hereby grants to HCHC a non-exclusive license to use the names "The University of North Carolina Health Care System," "UNC Health Care System," "The University of North Carolina Hospitals at Chapel Hill," or "UNC Hospitals," and related logos in connection with UNCH's management of Pardee Hospital. Any use of such names shall be subject to the prior approval of both UNCH and the HCHC Board of Directors. This license grant is part of the consideration provided by UNCH in this Agreement, for which UNCH is receiving fair market value consideration, as itemized in Exhibit C. This license shall automatically terminate upon the termination of this Agreement

4. TERM; TERMINATION

(a) Term. This Agreement shall commence as of the Effective Date and shall terminate on the tenth anniversary of the Effective Date. This Agreement may be renewed by written agreement of the parties.

(b) Termination. Either party may terminate this Agreement without cause at any time after one (1) year from the Effective Date as follows:

- (i) UNCH may terminate upon at least one hundred (180) days prior written notice;
- (ii) HCHC may terminate upon at least sixty (60) days prior written notice;

(iii) Upon material breach of this Agreement by the non-breaching party, provided that the non-breaching party first shall have provided to the breaching party written notice of such breach and a thirty (30) day period in which to cure such breach. If at the end of the thirty (30) day cure period, the breaching party has not substantially cured the breach, the non-breaching party may provide the breaching party with written notice declaring this Agreement to be terminated thirty (30) days after receipt of such written notice by the breaching party;

(iv) Immediately by one party upon the dissolution, insolvency, or filing for bankruptcy of the other party; or

(v) Immediately if any license, permit, accreditation or approval required for the operation of HCHC cannot be obtained, in the opinion of UNCH, or is at any time suspended, terminated or revoked.

(c) Conditions of Termination. Upon termination of this Agreement pursuant to the provisions of subsection 4(b) above, all obligations of UNCH to provide further Services hereunder shall be deemed immediately terminated, and UNCH shall cooperate with HCHC and its representatives to ensure that records, documents, and other such materials are appropriately returned to HCHC in a format accessible to HCHC. After the effective date of termination, HCHC shall compensate UNCH on a reasonable hourly basis for UNCH's assistance in completing any Services begun hereunder, if requested by HCHC and as mutually agreed by the parties, in transitioning management back to HCHC or to a third party. Any obligations of HCHC to pay fees to UNCH hereunder that arose prior to the termination of this Agreement shall survive the termination of this Agreement, and HCHC shall be fully responsible for all such fees. HCHC shall pay all fees earned and accrued through the date of termination of this Agreement to UNCH in the manner specified in Exhibit C. If UNCH used a particular computer system or software in providing Services, UNCH shall cooperate with HCHC during the management transition back to HCHC or to a third party to make information from such system or software available to HCHC in an accessible format, provided however that, to the extent HCHC or any third party management company desires the electronic transfer of data or information from UNCH, HCHC shall be responsible for any costs to UNCH to effectuate such transfer in the format desired.

(d) HCHC's Continuing Use of Policies, Protocols, and Materials. To the extent UNCH implements at HCHC during the term of this Agreement any business or operating protocols or policies to which UNCH owns all rights, title, and interest, including educational or training programs and materials (collectively, "Policies, Protocols, and Materials"), HCHC shall have an unlimited license after termination of this Agreement to continued use of such Policies, Protocols, and Materials, without further compensation to UNCH; provided, however, to the extent UNCH utilizes any Policies, Protocols, and Materials to which UNCH does not own all

rights, title, and interest and/or that are licensed to UNCH and its affiliated entities by third parties and are nontransferable to HCHC after termination of this Agreement, HCHC's use of such Policies, Protocols, and Materials shall immediately cease upon termination of this Agreement, and HCHC may take no further action with respect to such Policies, Protocols, and Materials that could cause UNCH to be in breach of any third party licensing agreement. Under no circumstances is UNCH obligated to provide an unlimited license to HCHC after termination of this Agreement for Policies, Protocols, and Materials to which UNCH does not own all rights, title, and interest.

5. CONFIDENTIALITY

(a) Definition. For purposes of this Section, the term "Trade Secrets" shall mean all information, documentation, and materials, including without limitation, financial information such as books, records, financial statements, contracts, patient information, and other information concerning the business and operation of a party and its operating units that may be disclosed or made available from any source and in any form, including paper record, oral communication, audio recording, and electronic display, by such party and its operating units to the other party that derives independent actual or potential commercial value from not being generally known or readily ascertainable through independent development or reverse engineering by persons who can obtain economic value from its disclosure or use, and that is the subject of efforts that are reasonable under the circumstances to maintain its secrecy. "Trade Secrets" under this Section shall include information protected by N.C. Gen. Stat. § 66-152 et seq., and other confidential information described below.

Notwithstanding the foregoing, "Trade Secrets" shall not include information that: (a) as of the date of disclosure is already known to the receiving party; (b) is or becomes part of the public domain, through no act or fault of the receiving party; (c) is lawfully disclosed to the receiving party by a third party that is not obligated to maintain and preserve such information as confidential and proprietary; or (d) is independently developed by or for the receiving party without the benefit of the Trade Secrets of the disclosing party. The nondisclosure obligation of this Section shall not apply to the extent disclosure is required by law, regulatory or accrediting agencies or a court of competent jurisdiction.

(b) Confidentiality. Each party acknowledges and agrees that all Trade Secrets of the disclosing party are confidential to and the sole and exclusive property of the disclosing party or of the disclosing party's patients, as appropriate, and that any unauthorized disclosure or use of such information will cause irreparable harm, injury, and loss to the disclosing party or patients, as appropriate. Each party agrees to hold the Trade Secrets of the other party in strictest confidence and (a) to use any Trade Secrets of the other party solely for the purposes required in connection with the business relationship of the parties; (b) not to disclose any Trade Secrets of the other party to any person or entity other than its agents, employees, or representatives who have a need to know such information for the permissible purposes hereunder and in accordance with its obligations under state and federal law; (c) not to reproduce, distribute or otherwise disseminate Trade Secrets of the other party, and to protect Trade Secrets of the other party from disclosure by others; and (d) to return the Trade Secrets of the other party, including all copies and records thereof, to the disclosing party upon its request, or upon the termination of the

business relationship of the parties, whichever occurs first. Each party agrees that it shall not be a breach of this Section for a party to disclose information regarding the other party to the party's governing Boards in connection with the oversight responsibilities of such Boards.

Each party agrees that the obligations contained in this Section will be honored by its agents, employees, and representatives, and by any subsidiary company, parent company, or company related to such party by common ownership, and its agents, employees, and representatives. Each party agrees to require each of its employees or agents to retain all proprietary information of the other party, including all patient information, in strict confidence.

(c) Other Confidential Information. In the event any of the information considered and treated as confidential by a party and disclosed during the course of the parties' business relationship does not qualify as statutorily protected Trade Secrets, then the parties acknowledge and agree that such information shall nonetheless remain confidential and shall not be disclosed by the receiving party to any other party during the term of the parties' business relationship and for a period of three (3) years following the termination of the business relationship, absent the express written consent of the disclosing party; provided, however, that patient information shall not be disclosed at any time following the execution of this Agreement.

(d) Survival. The obligations of the parties under this Section shall survive the expiration, termination, or cancellation of this Agreement and/or the business relationship of the parties, and shall continue to bind the parties, their agents, employees, representatives, successors, and assigns as set forth herein.

(e) Breach. In the event of any actual or threatened breach or violation of this Section, the disclosing party shall have full rights to seek injunctive relief, in addition to any other rights and remedies it may have.

6. COMPLIANCE WITH LAWS

(a) Each party shall comply with all laws, ordinances, codes, rules, regulations, and licensing requirements that are applicable to the conduct of its business and the performance of this Agreement, including those of federal, state, and local agencies having jurisdiction and/or authority.

(b) It is the intent of UNCH and HCHC to comply with federal and state antitrust laws and to conduct their activities pursuant to this Agreement in accordance with such laws. To the extent applicable, UNCH and HCHC will take such steps as are necessary to comply with such laws.

(c) UNCH shall have the authority to receive, create, access and possess Protected Health Information, as such term is defined by the Health Insurance Portability and Accountability Act and the regulations promulgated thereunder ("HIPAA"), related to patients of HCHC. UNCH shall maintain the privacy and security of such Protected Health Information in the manner required of HCHC by applicable law, including without limitation HIPAA, as such may be amended from time to time. The parties shall enter into a HIPAA-compliant Business

Associate Agreement, which is attached hereto as Exhibit G and incorporated herein by reference.

7. INSURANCE

(a) At all times during the term of this agreement, UNCH and HCHC each at its own expense shall secure and maintain commercial general liability insurance covering itself and its respective employees. Such coverage provided by UNCH and HCHC may be afforded via commercial insurance, self-insurance, or some combination thereof, at limits of at least \$1,000,000 per occurrence. Such coverage shall be primary and non-contributory. Each party shall provide a certificate of insurance evidencing such coverage upon request of the other party.

(b) At all times during the term of this agreement, UNCH and HCHC each at its own expense shall secure and maintain professional liability (medical malpractice) insurance covering itself and its respective employees. Such coverage provided by UNCH and HCHC may be afforded via commercial insurance, self-insurance, or some combination thereof at limits of at least \$3,000,000 per claim/occurrence and \$7,000,000 in the aggregate. Such coverage shall be primary and non-contributory. Each party shall provide a certificate of insurance evidencing such coverage upon request of the other party. Such coverage shall be either (1) on an occurrence basis or (2) on a claims-made basis. If the coverage is on a claims-made basis, both UNCH and HCHC hereby agree that, prior to the effective date of termination of their respective current insurance coverage, both parties shall, at their respective expense, either renew or procure replacement policies annually thereafter having a retroactive date no later than the Effective Date or purchase tail coverage in the above stated amounts for all claims arising out of incidents occurring prior to termination of the respective party's current coverage or prior to termination of this Agreement.

(c) UNCH and HCHC each shall secure and maintain at all times during the term, at its respective sole expense, workers' compensation/employers liability insurance covering its respective employees. Such coverage provided by UNCH and HCHC may be afforded via commercial insurance or self-insurance at the following limits:

Limits:	Workers' Compensation -	Statutory limits
	Employers Liability -	\$1,000,000 each accident; \$1,000,000 disease policy limit; \$1,000,000 disease each employee.

Such coverage shall be primary and non-contributory. Each party shall provide a certificate of insurance evidencing such coverage upon request of the other party.

(d) UNCH and HCHC each shall secure and maintain at all times during the term at their respective sole expense automobile liability insurance covering themselves and their respective employees for whom such coverage is necessary or appropriate in the course of business operations. Such coverage provided by UNCH and HCHC may be afforded via commercial insurance, self-insurance, or some combination thereof at limits of at least

\$1,000,000 per occurrence. Such coverage shall be primary and non-contributory. Each party shall provide a certificate of insurance evidencing such coverage upon request of the other party.

(e) HCHC shall secure and maintain at all times during the term, at its sole expense, directors' and officers' liability insurance covering its directors and officers, including coverage for the personnel of UNCH listed in Exhibit B. Such coverage provided by HCHC may be afforded via commercial insurance or self-insurance at limits of at least \$1,000,000 per claim/occurrence and \$3,000,000 in the aggregate. Such coverage shall be primary and non-contributory. HCHC shall provide a certificate of insurance evidencing such coverage upon request of UNCH.

(f) HCHC shall maintain a fidelity bond covering all employees with access to the cash assets of HCHC, including the personnel of UNCH listed in Exhibit B.

(g) As to each policy identified in this Section 7 to be maintained by HCHC, such policy shall (i) name UNCH and its agents and employees as additional insureds; and (ii) provide that no cancellation thereof or material change therein shall be effective until at least thirty (30) days after receipt by UNCH of written notice to such effect. UNCH has had an opportunity in advance to review the current coverage maintained by HCHC, and HCHC shall not make material changes to such coverage without the advance written notice to UNCH required herein.

8. NON-SOLICITATION

(a) The parties acknowledge that personnel are a significant asset to the parties, and that each party will gain knowledge of the employees of the other party through performance of this Agreement. Accordingly, UNCH and HCHC each agree that, except as shall be mutually agreed between the parties, during the term of this Agreement (including any renewals) and for a period of one (1) year following the date upon which this Agreement or any renewal of this Agreement is terminated for any reason, it shall not solicit for employment any employees of the other party who become known to such party through this Agreement. Nothing herein shall prevent an employee of a party from applying for a posted position with the other party or any of its affiliates.

(b) The parties acknowledge and agree that the recruitment of senior-level employees is a lengthy and expensive process, and further that the solicitation by either party of the other party's senior-level employees will result in economic damage to the non-soliciting party. Both parties further agree and acknowledge that the economic damages that the non-soliciting party would suffer as a result of the other party's breach of this Section 8 are difficult to ascertain on the date hereof because of their indefiniteness and uncertainty; notwithstanding this, the parties acknowledge and agree that \$100,000 is a reasonable approximation of the damages that the non-soliciting party would suffer as a result of the other party's solicitation of its senior-level employees, including but not limited to the Chief Executive Officer, which damages would include, but not be limited to administrative costs associated with recruiting a replacement and training such replacement. Each party agrees that \$100,000 is reasonable and that it will pay the other party the full amount if it breaches this Section 8.

(c) Notwithstanding anything to the contrary, herein, the parties acknowledge that HCHC, prior to the execution of this Agreement, recruited an individual whom UNCH will employ as CEO, pursuant to the terms of this Agreement, and whom initially will serve as the CEO of HCHC, as contemplated by this Agreement. If this Agreement is terminated within the first year following the Effective Date, the right of HCHC to employ such individual to continue to serve as the CEO of HCHC, with or without the consent of UNCH, is not subject to the provisions of this Section 8, and HCHC may so employ this individual without limitation or sanction.

9. CERTIFICATE OF NEED OPPORTUNITIES

During the term of this Agreement, UNCH shall review the State Medical Facilities Plan on behalf of HCHC and shall advise the HCHC Board of Directors of potential Certificate of Need ("CON") opportunities that may be available to HCHC.

10. REPRESENTATIONS OF THE PARTIES

(a) Representations of UNCH. UNCH hereby makes material representations as follows:

(i) UNCH is an agency of the State of North Carolina with full power and authority necessary to enable it to own, lease or otherwise hold its properties and assets and to carry on its operations as presently conducted.

(ii) UNCH has full power and authority to execute and deliver this Agreement and to perform its obligations under this Agreement. The execution and delivery by UNCH of this Agreement and the performance of its obligations hereunder have been duly and validly authorized by all necessary action on its part. This Agreement has been duly executed and delivered by UNCH and constitutes the legal, valid and binding obligation of UNCH, enforceable against UNCH in accordance with its terms.

(iii) To the knowledge of UNCH, there is no requirement applicable to UNCH to make any filing with, or to obtain any permit, authorization, consent or approval of, any governmental authority as a condition to the performance of the Services, other than the approval of the UNC Health Care System Board of Directors, which has so approved.

1.

(iv) To its knowledge, UNCH is in material compliance with all laws or regulations applicable to it and is not aware of any pending, threatened or unasserted claims to the contrary. UNCH has not received any written communication from a governmental authority that alleges that it is not in compliance with any law applicable to the performance of the Services.

(v) To the knowledge of UNCH, UNCH has never been charged with any violation of any law involving fraudulent or abusive practices relating to its participation in state or federally sponsored reimbursement programs, including but not limited to fraudulent billing practices. Neither UNCH nor, to the knowledge of UNCH, any officer or director of UNCH, has engaged on behalf of UNCH in any of the following: (i) knowingly and willfully

making or causing to be made a false statement or representation of a material fact in any application for any benefit or payment under any Federal Health Care Program, as that term is defined at 42 U.S.C. § 1320a-7b(f) ("FHCP") (part of the federal "fraud and abuse" provisions); (ii) knowingly and willfully making or causing to be made any false statement or representation of a material fact for use in determining rights to any benefit or payment under any FHCP; (iii) failing to disclose knowledge of the occurrence of any event affecting the initial or continued right to any benefit or payment by a claimant under any FHCP on its/his/her own behalf or on behalf of another, with intent to secure such benefit or payment fraudulently; (iv) knowingly and willfully soliciting or receiving any remuneration (including any kickback, bribe or rebate), directly or indirectly, overtly or covertly, in cash or in kind or offering to pay such remuneration (A) in return for referring an individual to a person for the furnishing or arranging for the furnishing of any item or service for which payment may be made in whole or in part by any FHCP, or (B) in return for purchasing, leasing or ordering or arranging for or recommending the purchasing, leasing or ordering of any good, facility, service, or item for which payment may be made in whole or in part by any FHCP.

(vi) There are no lawsuits, claims, or legal, administrative or arbitration proceedings or investigations pending, or to the knowledge of UNCH, threatened, by or against UNCH that would affect the performance of the Services, or that seek to enjoin the consummation of the transactions contemplated herein.

(vii) UNCH is exempt from filing, or has filed or caused to be filed on a timely basis, all tax returns and all reports with respect to taxes that are or were required to be filed pursuant to applicable legal requirements, including those related to unrelated business income. Any such tax returns and reports filed by UNCH are true, correct and complete in all material respects. UNCH has paid, or made provision for the payment of, all taxes that have or may have become due for all periods covered by the tax returns or otherwise, or pursuant to any assessment received by UNCH. All taxes that UNCH is or was required to withhold, deduct or collect have been timely withheld, deducted and collected and, to the extent required, have been paid to the proper governmental body or other person.

(viii) Exhibit H contains a complete list of all of UNCH's affiliated entities, including without limitation any parent corporations, affiliates of a parent corporation, subsidiaries, joint ventures, whether via ownership or contract, and ownership interests, whether whole or partial, in any other legal entities.

(b) Representations of HCHC. HCHC hereby makes material representations as follows:

(i) HCHC is a North Carolina non-profit corporation that leases its facilities from Henderson County. HCHC has full power and authority necessary to enable it to lease or otherwise hold properties and assets and to carry on the operation of a hospital. HCHC does not have the authority to own real property without the express consent of the Henderson County Board of Commissioners but does have the authority to own personal property without limitation.

(ii) HCHC has full power and authority to execute and deliver this Agreement and to perform its obligations under this Agreement, subject to approval by the Henderson County Board of Commissioners. The execution and delivery by HCHC of this Agreement and the performance of its obligations hereunder have been duly and validly authorized by all necessary action on its part, including but not limited to approval and authorization by the Henderson County Board of Commissioners. This Agreement has been duly executed and delivered by HCHC and constitutes the legal, valid and binding obligation of HCHC, enforceable against HCHC in accordance with its terms.

(iii) Neither the execution and delivery of this Agreement, nor the fulfillment of or compliance with the terms and conditions of this Agreement conflict with or result in a breach of any terms, conditions, or provisions of any restrictions or agreements to which HCHC is now a party or to which HCHC's facilities or assets are subject.

(iv) Exhibit D contains a complete and accurate list of each governmental authorization that is held by HCHC or that otherwise relates to Pardee Hospital or HCHC's affiliated operations (the "Governmental Authorizations"). Each Governmental Authorization is valid and in full force and effect. Except as set forth in Exhibit E, HCHC is, and at all times since January 1, 2008, has been, in material compliance with all of the terms and requirements of each Governmental Authorization. Except as set forth in Exhibit E, HCHC has not received, at any time since January 1, 2008, any notice or other communication (whether oral or written) from any governmental body or any other person regarding (A) any actual, alleged, possible or potential violation of or failure to comply with any term or requirement of any Governmental Authorization or (B) any actual, proposed, possible or potential revocation, withdrawal, suspension, cancellation, termination of or modification to any Governmental Authorization. The Governmental Authorizations collectively constitute all of the governmental authorizations necessary to permit HCHC to lawfully conduct and operate Pardee Hospital and its affiliated operations in the manner in which HCHC currently conducts and operates such businesses. Except as set forth on Exhibit D, to the knowledge of HCHC, there is no requirement applicable to HCHC to make any filing with, or to obtain any permit, authorization, consent or approval of, any governmental authority as a condition to the consummation of this Agreement.

2.

(v) To its knowledge, HCHC is in material compliance with all laws or regulations applicable to it and no facts or circumstances exist that, with or without the passing of time or the giving of notice or both, might reasonably serve as the basis for any claim that HCHC is not in material compliance with any law or regulation applicable to it. Except as set forth in Exhibit E, HCHC is not aware of any pending, threatened or unasserted claims to the contrary, and HCHC has not received any written communication from a governmental authority that alleges that it is not in compliance with any law. Upon request, HCHC shall disclose to UNCH in writing any direct or indirect financial relationships between HCHC and any physician or other person or entity in a position to make or influence referrals to HCHC.

(vi) To the knowledge of HCHC, HCHC has never been charged with any violation of any law involving fraudulent or abusive practices relating to its participation in state or federally sponsored reimbursement programs, including but not limited to fraudulent

billing practices. To its knowledge, HCHC has properly and legally billed all intermediaries and third party payors for services rendered and has maintained its records to reflect such billing practices. No funds with respect to HCHC are now, or to the knowledge of HCHC will be, withheld by any Medicare intermediary or third party payor, other than in the usual course of business. To the knowledge of HCHC, neither HCHC nor any officer or director of HCHC, has engaged in any of the following: (i) knowingly and willfully making or causing to be made a false statement or representation of a material fact in any application for any benefit or payment under any FHCP; (ii) knowingly and willfully making or causing to be made any false statement or representation of a material fact for use in determining rights to any benefit or payment under any FHCP; (iii) failing to disclose knowledge of the occurrence of any event affecting the initial or continued right to any benefit or payment by a claimant under any FHCP on its/his/her own behalf or on behalf of another, with intent to secure such benefit or payment fraudulently; (iv) knowingly and willfully soliciting or receiving any remuneration (including any kickback, bribe or rebate), directly or indirectly, overtly or covertly, in cash or in kind or offering to pay such remuneration (A) in return for referring an individual to a person for the furnishing or arranging for the furnishing of any item or service for which payment may be made in whole or in part by any FHCP, or (B) in return for purchasing, leasing or ordering or arranging for or recommending the purchasing, leasing or ordering of any good, facility, service, or item for which payment may be made in whole or in part by any FHCP.

(vii) HCHC is exempt from filing, or has filed or caused to be filed on a timely basis, all tax returns and all reports with respect to taxes that are or were required to be filed pursuant to applicable legal requirements. All tax returns and reports filed by HCHC are true, correct and complete in all material respects. HCHC has paid, or made provision for the payment of, all taxes that have or may have become due for all periods covered by the tax returns or otherwise, or pursuant to any assessment received by HCHC. All taxes that HCHC is or was required to withhold, deduct or collect have been timely withheld, deducted and collected and, to the extent required, have been paid to the proper governmental body or other person.

(viii) Except as set forth in Exhibit E, there are no lawsuits, actual claims, or legal, administrative or arbitration proceedings or investigations pending, or to the knowledge of HCHC, actually threatened, by or against or affecting HCHC, or seeking to enjoin the consummation of the transactions contemplated herein.

(ix) Exhibit F contains a complete list of all of HCHC's affiliated entities, including without limitation any parent corporations, affiliates of a parent corporation, subsidiaries, joint ventures, whether via ownership or contract, and ownership interests, whether whole or partial, in any other legal entities.

(c) Statements of Both Parties

(i) HCHC and UNCH each agree that they shall continue to operate their respective hospitals in accordance with their existing missions and in furtherance of providing high quality medical care to, and otherwise benefiting, the communities they serve;

(ii) Pardee Hospital will be managed, operated and maintained as a Community General Hospital, as defined in N.C.G.S. § 131E-6(2), and HCHC will provide the same or similar programs and services as are provided by other Community General Hospitals in similarly situated and similar sized communities in the State of North Carolina;

(iii) Pardee Hospital will be managed, operated and maintained in a manner that will preserve the tax-exempt, Section 115 status of HCHC;

(iv) Pardee Hospital will provide care in accordance with its charity care and non-discrimination policies;

(v) Pardee Hospital will be operated primarily for the benefit of the community it serves; and

(vi) Nothing in this Agreement shall be construed to be a warranty by UNCH with respect to the profitability of HCHC's operations or to constitute UNCH as a guarantor of any obligations of HCHC.

11. LIABILITY/RESPONSIBILITY OF THE PARTIES

(a) No Assumed Liability. UNCH shall neither assume nor become liable for the payment or performance of any liabilities of HCHC of any nature whatsoever, whether related to or arising out of the operation of HCHC or its facilities, including without limitation: (a) any liability based upon any act or omission of HCHC or any of its representatives; (b) any indebtedness of HCHC or any of its representatives; (c) any liabilities relating to any breach of contract, breach of warranty, tort, infringement, or violation of law by HCHC or any of its representatives; (d) any liability for lawsuits, claims, or legal, administrative or arbitration proceedings or investigations relating to HCHC or any of its representatives. HCHC shall neither assume nor become liable for the payment or performance of any liabilities of UNCH of any nature whatsoever, whether related to or arising out of the operation of UNCH or its facilities, including without limitation: (a) any liability based upon any act or omission of UNCH or any of its representatives; (b) any indebtedness of UNCH or any of its representatives; (c) any liabilities relating to any breach of contract, breach of warranty, tort, infringement, or violation of law by UNCH or any of its representatives; (d) any liability for lawsuits, claims, or legal, administrative or arbitration proceedings or investigations relating to UNCH or any of its representatives.

(b) Indemnification. To the extent permitted by law, each party agrees that it shall indemnify the other party, including the other party's officers, directors, employees, successors and assigns, for any and all liability, claims, and costs of whatsoever kind and nature, including without limitation attorneys' fees, arising out of or from: (i) any breach of any of the representations or warranties of the indemnifying party contained in or made pursuant to this Agreement or other document delivered by the indemnifying party pursuant to this Agreement, and (ii) any failure by the indemnifying party to perform or observe, or to have performed or observed, in full, any covenant, agreement, obligation or condition to be performed or observed by it pursuant to this Agreement. HCHC agrees that it shall indemnify UNCH, including UNCH's officers, directors, employees, successors and assigns, for any and all liability arising

from or related to the lease, ownership, or operation of Pardee Hospital or any other asset, facility or other operations of HCHC, except as to any liability arising out of or resulting from the negligence or misconduct of UNCH or any of its officers, agents or employees. The requirements of this Section will survive the expiration or termination of this Agreement.

12. MEDICARE RECORD ACCESS

In compliance with 42 U.S.C. § 1395x(v)(1)(I) and implementing regulations, UNCH agrees, until the expiration of four (4) years after the services are furnished under this Agreement, to allow the Secretary of the Department of Health and Human Services and the Comptroller General access to this Agreement, all applicable purchase orders, and to the books, documents and records of UNCH necessary to verify the nature and extent of the costs of this Agreement. UNCH further agrees that if any of the duties of this Agreement are carried out by a subcontractor of UNCH pursuant to a subcontract with a cost in excess of \$10,000 within a period of twelve (12) months, such subcontract will contain a clause to the effect that, until the expiration of four (4) years after the services are furnished under such subcontract, the Secretary of the Department of Health and Human Services and the Comptroller General will have access to such subcontract and to the books, documents and records of the subcontractor necessary to verify the nature and extent of the costs of such subcontract. This Section will survive the expiration or termination of this Agreement.

13. CHANGES IN LAWS

If there is a change in Medicare, Medicaid or other federal or state statutes or regulations or in the interpretation thereof, that renders any of the material terms of this Agreement unlawful or unenforceable, this Agreement shall be amended by the parties hereto as a result of good faith negotiations to the least extent necessary in order to carry out the original intention of the parties in compliance with such law or regulation. In the event such law or regulation is subsequently amended or interpreted in such a way to make any provision of this Agreement that was formerly invalid valid, such provision shall be considered valid from the effective date of such interpretation or amendment.

UNCH and HCHC further agree that the compensation set forth herein represents fair market value as a result of arms-length negotiation and does not take into account the volume or value of any referrals or other business generated between the parties. The benefits hereunder do not require, are not payment for, and are not in any way contingent upon, the referral (as that term is defined at 42 U.S.C. § 1395nn or 42 U.S.C. § 1320a-7b), admission, or any other arrangement for the provision of any item or service offered by either party to patients of the other party in any facility or health care operation controlled, managed, or operated by the parties. This Agreement is not intended to influence the judgment of any physician or other health care provider in choosing a medical facility appropriate for the proper care of his or her patients. The parties hereby support a patient's right to select the medical facility of his her choice.

14. NOTICES

All notices or other communications required or permitted hereunder shall be in writing and shall be deemed sufficiently given if sent by certified mail, express mail service, or overnight delivery service, postage pre-paid, addressed as set forth below or to other such address as shall be furnished in writing by a party, and such notice or communication shall be deemed to have been given upon receipt.

If to HCHC: Henderson County Hospital Corporation
Attn: Chairman, Board of Directors
800 N. Justice Steet
Hendersonville, NC 28791

If to UNCH: University of North Carolina Hospitals
Attn: Legal Department
101 Manning Drive
4th Floor Med Wing E
Chapel Hill, NC 27514

15. MISCELLANEOUS

(a) This Agreement may be amended only in writing by mutual agreement of the parties.

(b) No party may assign this Agreement without the written agreement of the other party; however, UNCH may delegate Services to be performed hereunder to its affiliates, parent, or other related entities without the prior written consent or approval of HCHC. This Agreement shall be binding upon and inure to the benefit of the parties, their successors in interest and permitted assigns.

(c) This Agreement and any documents incorporated specifically by reference herein represent the entire agreement between the parties and supersede all prior oral or written statements or agreements.

(d) All promises, requirements, terms, conditions, provisions, representations, guarantees, and warranties contained herein shall survive this Agreement's expiration or termination date unless specifically provided otherwise herein, or unless superseded by applicable federal or state statutes of limitation.

(e) In the event that any provision of this Agreement is held to be invalid or unenforceable, the remainder of this Agreement will remain in full force and effect.

(f) In the event that a party waives any provision of this Agreement, it will not be deemed to have waived that provision at any other time or to have waived any other provision.

(g) This Agreement shall be governed by the laws of the State of North Carolina.

(h) This Agreement is entered into by and between UNCH and HCHC solely for their benefit and shall not create rights in any third party beneficiary. However, the Henderson County Board of Commissioners ("BOC") joins in the execution of this Agreement for the limited purposes of evidencing the BOC's grant of authority allowing HCHC to enter into this Agreement.

(i) This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original, but all of which together shall constitute one and the same instrument.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their authorized agents effective as of the date first above written.

HENDERSON COUNTY HOSPITAL
CORPORATION

By: 

Title: CHAIRMAN

UNIVERSITY OF NORTH CAROLINA AT
CHAPEL HILL HOSPITALS

By: 

Title: President

COUNTY OF HENDERSON

By: 

Title: Chairman

EXHIBIT A

SERVICES

Services

The following services and services incidental to the following services ("Services") will be included as part of the management fee or carried out under the supervision of the CEO employed by UNCH but assigned to Pardee Hospital, and/or the CFO, employed by Pardee Hospital but with dotted line reporting to the CFO of UNC Hospitals (hereinafter, "CEO" and "CFO"), as more fully described below:

- Supervision of the business office functions: accounting, patient billing, accounts payable, purchasing, etc.
- Preparation of the operating and capital budgets
- Preparation of monthly and annual financial reports
- Analysis of business office operations
- Monthly management report from UNCH, including such specific information as may be reasonably requested by HCHC from time to time
- Access to purchasing agreements with UNC Hospitals' Group Purchasing Organization and other locally negotiated purchasing agreements
- Managed care contracting consultation and negotiation to the extent in compliance with applicable laws, including antitrust
- Consultation on CON development
- Development of a physician recruitment and retention plan
- Access for HCHC staff to UNCH Human Resources Development and Nursing Practice Education and Research programs that are provided at no cost to UNCH employees. HCHC will pay the UNCH staff rate for those programs that require a registration fee.
- Board of Directors education programs
- The UNCH Fiscal Staff will conduct an in-depth analysis of the processes, policies, and information systems in use in the HCHC business office to identify any modifications suggested by a change in management and the costs associated with those changes. Opportunities for streamlining operations will also be evaluated and discussed with the HCHC Board of Directors.
- Development of a productivity monitoring system.

Additional Services

The following additional services ("Additional Services") will be available from UNCH upon request by HCHC as part of this proposed contract at cost plus 10%*:

- Marketing
- Information technology consultation services

- Development of cost accounting and decision support systems
- Quality improvement advice and consultation
- Clinical support services consultation
- Strategic and facility planning services
- Supply chain consultation
- Other services can be evaluated on a case by case basis

*The additional 10% covers additional staffing and other expenses required for UNCH to cover needs associated with this Agreement. UNCH shall provide to HCHC an estimate detailing the cost to UNCH of each such item in advance of providing such service.

Limitation on Services

Services not specifically described are not included as part of this Agreement.

Detailed Description of Services

Hospital Operations: The CEO employed by UNCH but assigned to Pardee Hospital (hereinafter, the "CEO") will provide administrative oversight to all business, administrative and executive functions of Pardee Hospital, consistent with and subject to the policies, procedures and objectives and periodic directives of the HCHC Board of Directors. The CEO will report to the HCHC Board of Directors as requested but no less than monthly regarding the status of operations of Pardee Hospital.

These duties of the CEO include, but are not limited to, the following:

1. Insures preparation of administrative and financial reports for presentation to the HCHC Board of Directors,
2. Manages Pardee Hospital Department Heads, including the CFO (employed by Pardee Hospital and with dotted line reporting to the UNCH CFO),
3. Maintains open lines of communication with the medical staff regarding all matters relating to Pardee Hospital,
4. Facilitates resolution of questions and problems relating to HCHC operations,
5. Stays abreast of all public policy, economic developments and other issues pertaining to HCHC operations,
6. Oversees all accreditation and compliance efforts,
7. Negotiates professional service contracts,
8. Develops and maintains open communication with other health care providers in Henderson County and the region,
9. Represents Pardee Hospital at local, regional and statewide meetings of health care providers and policy makers, and
10. Represents Pardee Hospital to the public.
11. Ensures effective quality and compliance programs that are consistent with current health care laws and regulations and that reflect expected changes due to health care reform and changes in reimbursement methodologies.

12. Fulfills those duties assigned by the HCHC Board of Directors, including but not limited to those duties set out in the HCHC Board of Directors Bylaws, as the same may be amended from time to time.
13. Assures that appropriate hospital departments are established and that necessary inter- and intra-departmental meetings occur.
14. Prepares reports for the Board of Directors and Medical and Allied Health Staff as appropriate, including (1) general activities and performance within the hospital, (2) federal and state regulations and local developments that affect hospital operations, and (3) actual or potential liabilities arising from federal and state regulations or otherwise and measures taken to avoid or address such liabilities.
15. Maintains policies to prevent hospital employee conflicts of interest in any financial aspect of hospital business.
16. Presents operating and capital budgets to HCHC, as well as other projections including but not limited to annual compensation plans, which include salaries, bonuses, awards, benefits, changes in staffing, and other amenities; presents to HCHC any changes in the financial forecast, including reductions in force.
17. Makes purchases of approved and budgeted capital equipment, and has authority to make unbudgeted purchases of capital equipment consistent with HCHC policies and procedures as approved by the HCHC Board, except in the event a patient emergency requires such expenditure, in which case approval shall be sought as soon as practicable after such emergency.

Financial Management: The CFO will provide, at a minimum, supervision of the business office functions such as accounting, patient billing, medical information management, accounts payable and purchasing and will be responsible for the preparation of the operating and capital budgets. Monthly financial reports, including monthly revenues and expenses, and an annual financial report will be provided to the HCHC Board of Directors. The CFO will coordinate audit activity with an independent public accounting firm to be selected by the HCHC Board of Directors.

Purchasing Agreements: As an affiliate hospital, after signing a Group Purchasing Organization ("GPO") Participation Agreement, HCHC will have access to the UNC Health Care System's purchasing agreements with the UNCH's GPO and other locally negotiated purchasing agreements. The UNCH Purchasing Department will offer assistance in accessing both GPO and locally negotiated purchasing agreements to afford HCHC the opportunity to make an informed decision regarding its willingness to access such agreements. This assistance will include the UNCH Purchasing Department facilitating discussions with suppliers to extend UNCH pricing to HCHC, if applicable and if HCHC is eligible, in support of the cost savings opportunities available to it.

Managed Care Contracting Consultation: The management team for the managed care office will evaluate, negotiate and execute managed care contracts with insurance companies, managed care organizations, employers, and other payers. The managed care office staff will participate in all areas of non-government reimbursement as legally permitted.

Physician Recruitment: The CEO will work with the HCHC Board of Directors and medical staff to develop a recruitment program to attract physicians to HCHC's service area and to retain physicians who already have privileges at Pardee Hospital.

Staff Education: The UNCH Human Resources Development Department and the Nursing Practice Education and Research Department have extensive educational offerings covering clinical and management topics. These programs will be made available to HCHC staff in Chapel Hill or at other scheduled venues as space permits. On occasion, off-site programs are presented that require a registration fee. In those instances, HCHC employees will pay the UNCH employee rate.

Board Education: Programs will be made available to the HCHC Board of Directors on the following topics:

- Health care trends and issues
- Board orientation and responsibilities
- Managed care
- Other program content as appropriate

EXHIBIT B

PERSONNEL

UNCH will provide a full time CEO for Pardee Hospital for the management of the day-to-day operations of the hospital. The CEO will be an employee of UNCH assigned to Pardee Hospital and will report to the HCHC Board of Directors, and to the President of UNCH who will provide oversight of the CEO.

Pardee Hospital will employ a full time Chief Financial Officer (CFO) for the management of the fiscal operation of Pardee Hospital, who shall report to the CEO for Pardee Hospital, with dotted line reporting to the CFO of UNCH, unless and until such time as Pardee Hospital desires that UNCH provide a full time CFO employed by UNC Hospitals but assigned to Pardee Hospital or until such time as the CFO employed by Pardee is terminated or otherwise terminates his employment. The CFO will consult regularly with the UNCH CFO and other members of the UNCH Fiscal Services staff.

All other staff will remain employees of HCHC, subject to the day-to-day supervision and management of the CEO.

The appropriate committee of the HCHC Board of Directors will participate in the decisions related to the recruitment of the CEO, and will have final approval of the candidate(s) recommended by UNCH. UNCH agrees that it shall present candidates to the HCHC Board of Directors and the Board will notify UNCH of its decision regarding the candidates within ten (10) days of initial presentation to the Board.

The CEO and the CFO will have annual performance reviews prepared by UNCH in consultation with the appropriate committee of the HCHC Board of Directors. HCHC and UNCH will mutually determine performance measures for the CEO and the CFO. In the event the CEO does not meet previously established performance standards, HCHC may request, and UNCH will reassign the individual outside of HCHC within thirty days of written request by HCHC. Likewise, if the CEO meets or exceeds performance standards, HCHC agrees to allow such individual to receive performance bonuses, as recommended by UNCH and approved by HCHC. If the CFO does not meet previously established performance standards, UNCH may recommend such action as may be appropriate and, in the event the CFO meets or exceeds performance standards, UNCH may recommend that such individual receive a performance bonus. Unless the CFO is employed by UNCH, HCHC, in its sole discretion, shall have the option of acting upon UNCH's recommendations with regard to the CFO. If the CFO is employed by UNCH, treatment of the CFO with respect to established performance standards shall be the same as that of the CEO.

UNCH will not remove the CEO from his or her assignment at HCHC without the prior written consent of HCHC.

EXHIBIT C

COMPENSATION

HCHC will reimburse UNCH for the salaries and benefits of the personnel listed in Exhibit B. Any increases in salaries or benefits above standard UNCH increases, including performance bonuses, shall require approval of HCHC's Board of Directors. HCHC also will reimburse UNCH for all relocation expenses, severance expenses and interim living expenses for such personnel, as needed and as mutually agreed upon by UNCH and HCHC. All other staff will be employees of and directly compensated by HCHC.

In addition to the salary of the CEO, and the CFO to the extent UNCH directly employs him or her (see Exhibit B), HCHC will pay UNCH:

1. A management fee of \$170,000 for the first year of the term of this Agreement. This fee will increase each subsequent year of the term by a percentage equal to the increase in the Consumer Price Index-U, Medical Care Services, as published by the Bureau of Labor Statistics at bls.gov, with any such annual increases not to exceed five percent (5%) of the then-current fees.
2. A fee of \$10,000 for the use of the names "The University of North Carolina Health Care System," "UNC Health Care System," "The University of North Carolina Hospitals at Chapel Hill," or "UNC Hospitals" and related logos.
3. For Additional Services as set forth in Exhibit A, actual cost plus 10%. UNCH shall exercise reasonable efforts to provide such Additional Services at the lowest available cost.

All amounts owed to UNCH by HCHC shall be prorated for any partial periods, if necessary, and paid on a monthly basis on the first day of each month. UNCH shall have the right to charge HCHC interest per annum at the rate of Wall Street Journal Prime Rate plus one (1) percent on all fees and reimbursable expenses not paid when due.

EXHIBIT D

GOVERNMENTAL AUTHORIZATIONS

1. Licensure as an Acute Care Hospital, with general acute and psych beds, by the North Carolina Department of Health and Human Services - Division of Health Service Regulation, license number H0161.
2. Licensure to provide Home Care , issued by the North Carolina Department of Health and Human Services -- Division of Health Service Regulation.

EXHIBIT E

ACTUAL OR POTENTIAL PROCEEDINGS AGAINST HCHC

- a) Family member of patient alleges injuries sustained when patient's stretcher tipped over and family member tried to break the fall. Request for compensation has been received directly from patient.
- b) Patient fell in room and sustained hip fracture, requiring surgery and extended hospital stay. Family has made request for assistance.
- c) Patient's bowel perforated during surgery, resulting in additional complications. An employee of a law firm has contacted HCHC with request for some compensation although no specific demand has been received.
- d) *Wankel v. Henderson County Hospital Corporation* is pending in the Superior Court for Henderson County although all issues have been settled by agreement of the parties. The parties are waiting on a conditional payment letter from CMS to consummate the settlement agreement.
- e) Patient expired as a result of complications of aspiration pneumonia. Family members have expressed an intent to file an action.
- f) *Ingram v. Henderson County Hospital Corporation, et al.* was initiated on May 11, 2011, and the carrier is providing a defense. This patient alleges multisystem organ failure, following two (2) visits to the Emergency Department, resulting in multiple amputations of fingers and both legs.
- g) Patient's interim guardian alleges infection following surgery. A request was made that HCHC waive its charges.
- h) Former employee alleges wrongful termination in October 2009. No claim was filed with the EEOC. Claim has been formally denied by HCHC.
- i) HCHC has self-reported an issue related to inadvertent employment of excluded individual.
- j) Office of Civil Rights has contacted HCHC pertaining to a physician (not employed by HCHC) accessing medical records without authorization and not in the course of treatment. HCHC has appropriately followed up internally.

EXHIBIT F

AFFILIATES OF HCHC

Henderson County Urgent Care Centers, Inc.

EXHIBIT G

BUSINESS ASSOCIATE AGREEMENT

BUSINESS ASSOCIATE AGREEMENT

This Agreement is made effective the 22nd of June, 2011, by and between HENDERSON COUNTY HOSPITAL CORPORATION, hereinafter referred to as "Covered Entity", and THE UNIVERSITY OF NORTH CAROLINA AT CHAPEL HILL HOSPITALS, hereinafter referred to as "Business Associate", (individually, a "Party" and collectively, the "Parties"). This Agreement supersedes any previously executed Business Associate Agreement between the parties.

WITNESSETH:

WHEREAS, Sections 261 through 264 of the federal Health Insurance Portability and Accountability Act of 1996, Public Law 104-191, known as "the Administrative Simplification provisions," direct the Department of Health and Human Services to develop standards to protect the security, confidentiality and integrity of health information; and

WHEREAS, pursuant to the Administrative Simplification provisions, the Secretary of Health and Human Services has issued regulations modifying 45 CFR Parts 160 and 164 (the "HIPAA Security and Privacy Rule"); and

WHEREAS, the Parties wish to enter into or have entered into an arrangement whereby Business Associate will provide certain services to Covered Entity, and, pursuant to such arrangement, Business Associate may be considered a "business associate" of Covered Entity as defined in the HIPAA Security and Privacy Rule (herein referred to as the "Management Services Agreement"); and

WHEREAS, Business Associate may have access to Protected Health Information (as defined below) in fulfilling its responsibilities under such arrangement;

THEREFORE, in consideration of the Parties' continuing obligations under the Arrangement Agreement, compliance with the HIPAA Security and Privacy Rule, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree to the provisions of this Agreement in order to address the requirements of the HIPAA Security and Privacy Rule and to protect the interests of both Parties.

1. DEFINITIONS

Except as otherwise defined herein, any and all capitalized terms in this Section shall have the definitions set forth in the HIPAA Security and Privacy Rule. In the event of an inconsistency between the provisions of this Agreement and mandatory provisions of the HIPAA Security and Privacy Rule, as amended, the HIPAA Security and Privacy Rule shall control. Where provisions of this Agreement are different than those mandated in the HIPAA Security and Privacy Rule, but are nonetheless permitted by the HIPAA Security and Privacy Rule, the provisions of this Agreement shall control.

The term "Protected Health Information" means individually identifiable health information including, without limitation, all information, data, documentation, and materials, including without limitation, demographic, medical and financial information, that relates to the past, present, or future physical or mental health or condition of an individual; the provision of health care to an individual; or the past, present, or future payment for the provision of health care to an individual; and that identifies the individual or with respect to which there is a reasonable basis to believe the information can be used to identify the individual. "Protected Health Information" includes without limitation "Electronic Protected Health Information" as defined below.

The term "Electronic Protected Health Information" means Protected Health Information which is transmitted by Electronic Media (as defined in the HIPAA Security and Privacy Rule) or maintained in Electronic Media.

Business Associate acknowledges and agrees that all Protected Health Information that is created or received by Covered Entity and disclosed or made available in any form, including paper record, oral communication, audio recording, and electronic display by Covered Entity or its operating units to Business Associate or is created or received by Business Associate on Covered Entity's behalf shall be subject to this Agreement.

II. CONFIDENTIALITY AND SECURITY REQUIREMENTS

(a) Business Associate agrees:

(i) to use or disclose any Protected Health Information solely: (1) for meeting its obligations as set forth in any agreements between the Parties evidencing their business relationship, or (2) as required by applicable law, rule or regulation, or by accrediting or credentialing organization to whom Covered Entity is required to disclose such information or as otherwise permitted under this Agreement, the Arrangement Agreement (if consistent with this Agreement and the HIPAA Security and Privacy Rule), or the HIPAA Security and Privacy Rule, and (3) as would be permitted by the HIPAA Security and Privacy Rule if such use or disclosure were made by Covered Entity;

(ii) to account for certain disclosures of Protected Health Information as required by Section 164.528 of the HIPAA Security and Privacy Rule. A copy of Covered Entity's policy regarding accounting of disclosures is available upon request;

(iii) to provide appropriate HIPAA training to its personnel, who have not previously received such training, within thirty days of the date of this agreement

(iv) at termination of this Agreement, the Management Services Agreement (or any similar documentation of the business relationship of the Parties), or upon request of Covered Entity, whichever occurs first, if feasible, Business Associate will return or destroy all Protected Health Information received from or created or received by Business Associate on behalf of Covered Entity that Business Associate still maintains in any form and retain no copies of such information, or if such return or destruction is not feasible, Business Associate will extend the protections of this Agreement to the information and limit further uses and disclosures to those purposes that make the return or destruction of the information not feasible; and

(v) to ensure that its agents, including a subcontractor, to whom it provides Protected Health Information received from or created by Business Associate on behalf of Covered Entity, agrees to the same restrictions and conditions that apply to Business Associate with respect to such information, and agrees to implement reasonable and appropriate safeguards to protect any of such information which is Electronic Protected Health Information. In addition, Business Associate agrees to take reasonable steps to ensure that its employees' actions or omissions do not cause Business Associate to breach the terms of this Agreement.

(b) Notwithstanding the prohibitions set forth in this Agreement, Business Associate may use and disclose Protected Health Information as follows:

(i) if necessary, for the proper management and administration of Business Associate or to carry out the legal responsibilities of Business Associate, provided that as to any such disclosure, the following requirements are met:

(A) the disclosure is required by law; or

(B) Business Associate obtains reasonable assurances from the person to whom the information is disclosed that it will be held confidentially and used or further disclosed only as required by law or for the purpose for which it was disclosed to the person, and the person notifies Business Associate of any instances of which it is aware in which the confidentiality of the information has been breached;

(ii) for data aggregation services, if to be provided by Business Associate for the health care operations of Covered Entity pursuant to any agreements between the Parties evidencing their business relationship. For purposes of this Agreement, data aggregation services means the combining of Protected Health Information by Business Associate with the protected health information received by Business Associate in its capacity as a business associate of another covered entity, to permit data analyses that relate to the health care operations of the respective covered entities.

(c) Business Associate will implement appropriate safeguards to prevent use or disclosure of Protected Health Information other than as permitted in this Agreement. Business Associate will implement administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of any Electronic Protected Health Information that it creates, receives, maintains, or transmits on behalf of Covered Entity as required by the HIPAA Security and Privacy Rule.

(d) The Secretary of Health and Human Services shall have the right to audit Business Associate's records and practices related to use and disclosure of Protected Health Information to ensure Covered Entity's compliance with the terms of the HIPAA Security and Privacy Rule.

(e) Business Associate shall report to Covered Entity any use or disclosure of Protected Health Information which is not in compliance with the terms of this Agreement, as well as any Security Incident, of which it becomes aware within forty-eight (48) hours of such discovery. For purposes of this Agreement, "Security Incident" means the attempted or successful unauthorized access, use, disclosure, modification, or destruction of information or interference with system operations in an information system. In addition, Business Associate

agrees to mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a use or disclosure of Protected Health Information by Business Associate in violation of the requirements of this Agreement, as well as to provide complete cooperation to Covered Entity should Covered Entity elect to review or investigate such noncompliance or Security Incident. Business Associate shall indemnify and hold harmless Covered Entity for any injury or damages arising from any noncompliance or Security Incident attributable to the negligence of Business Associate, including the failure to execute the terms of this Agreement.

III. AVAILABILITY OF PHI

Business Associate agrees to make available Protected Health Information to the extent and in the manner required by Section 164.524 of the HIPAA Security and Privacy Rule. Business Associate agrees to make Protected Health Information available for amendment and incorporate any amendments to Protected Health Information in accordance with the requirements of Section 164.526 of the HIPAA Security and Privacy Rule. In addition, Business Associate agrees to make Protected Health Information available for purposes of accounting of disclosures, as required by Section 164.528 of the HIPAA Security and Privacy Rule (see Section II(a)(ii) above).

IV. TERMINATION

Notwithstanding anything in this Agreement to the contrary, Covered Entity shall have the right to terminate this Agreement and the Management Services Agreement immediately if Covered Entity determines that Business Associate has violated any material term of this Agreement. If Covered Entity reasonably believes that Business Associate will violate a material term of this Agreement and, where practicable, Covered Entity gives written notice to Business Associate of such belief within a reasonable time after forming such belief, and Business Associate fails to provide adequate written assurances to Covered Entity that it will not breach the cited term of this Agreement within a reasonable period of time given the specific circumstances, but in any event, before the threatened breach is to occur, then Covered Entity shall have the right to terminate this Agreement and the Arrangement Agreement immediately.

V. MISCELLANEOUS

Except as expressly stated herein or the HIPAA Security and Privacy Rule, the parties to this Agreement do not intend to create any rights in any third parties. The obligations of Business Associate under this Agreement shall survive the expiration, termination, or cancellation of this Agreement, the Arrangement Agreement and/or the business relationship of the parties, and shall continue to bind Business Associate, its agents, employees, contractors, successors, and assigns as set forth herein.

This Agreement may be amended or modified only in a writing signed by the Parties. No Party may assign its respective rights and obligations under this Agreement without the prior written consent of the other Party. None of the provisions of this Agreement are intended to create, nor will they be deemed to create any relationship between the Parties other than that of independent parties contracting with each other solely for the purposes of effecting the provisions of this Agreement and any other agreements between the Parties evidencing their business relationship. This Agreement will be governed by the laws of the State of North Carolina. No change, waiver or discharge of any liability or obligation hereunder on any one or more occasions shall be deemed a waiver of performance of any continuing or other obligation, or shall prohibit enforcement of any obligation, on any other occasion.

The parties agree that, in the event that any documentation of the arrangement pursuant to which Business Associate provides services to Covered Entity contains provisions relating to the use or disclosure of Protected Health Information which are more restrictive than the provisions of this Agreement, the provisions of the more restrictive documentation will control. The provisions of this Agreement are intended to establish the minimum requirements regarding Business Associate's use and disclosure of Protected Health Information.

In the event that any provision of this Agreement is held by a court of competent jurisdiction to be invalid or unenforceable, the remainder of the provisions of this Agreement will remain in full force and effect. In addition, in the event a party believes in good faith that any provision of this Agreement fails to comply with the then-current requirements of the HIPAA Security and Privacy Rule, such party shall notify the other party in writing. For a period of up to thirty days, the parties shall address in good faith such concern and amend the terms of this Agreement, if necessary to bring it into compliance. If, after such thirty-day period, the Agreement fails to comply with the HIPAA Security and Privacy Rule, then either party has the right to terminate upon written notice to the other party.

The parties acknowledge that the American Recovery and Reinvestment Act of 2009 ("ARRA") requires the Secretary of Health and Human Services to promulgate regulations and interpretative guidance that are not available at the time of executing this Business Associate Agreement. In the event Covered Entity determines in good faith that any such regulation or guidance adopted or amended after the execution of this Business Associate Agreement shall cause any paragraph or provision of this Business Associate Agreement to be invalid, void or in any manner unlawful, or shall subject either party to penalty, then the parties agree to renegotiate in good faith to amend this Business Associate Agreement to comply with the change in law, regulation or interpretative guidance.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the day and year written above.

COVERED ENTITY:

By: 

Title: CHAIRMAN

BUSINESS ASSOCIATE:

By: 

Title: President

EXHIBIT H

LIST OF UNCH's AFFILIATED ENTITIES