

**COUNTY OF CLEVELAND, NORTH CAROLINA**  
**AGENDA FOR THE REGULAR COMMISSION MEETING**

**October 1, 2019**

**6:00 PM**

**County Commissioners Chamber**

---

- **Call to Order and Determination of a Quorum** - Commission Chair
- **Pledge of Allegiance and Invocation** (Please stand for the Pledge of Allegiance and remain standing for the Invocation)
- **Recognition of Elected Officials**
- **Recognition of Veterans**
- **Recognition of Law Enforcement**
- **Recognition of County Department Heads**

**1. MOTION TO ADOPT THE PROPOSED AGENDA**

*(Only emergency items shall be added to the agenda. Upon approval of the Commission Chair and County Commission, the item will be added.)*

**SPECIAL RECOGNITION**

- 2.** 2019 Professional Development Achievements

Susan Allen, Chairman

**SPECIAL PRESENTATION**

- 3.** Minority Enterprise Development Week 2019

Richard Hooker, MED Week President

**4. CITIZEN RECOGNITION**

*The citizen recognition portion of the meeting is an opportunity for persons wishing to appear before the Commission to do so. Each presentation will be limited to three (3) minutes. The Board is interested in hearing citizen concerns, yet speakers should not expect comment, action, or deliberation on subject matter brought up during this segment. Topics requiring further investigation will be referred to the appropriate county agency.*

## **5. CONSENT AGENDA**

*Motion to approve the following Consent Agenda items: (Consent items will be adopted with a single motion, second and vote, unless a request for removal from the Consent Agenda is heard from a Commissioner.)*

- |           |                                   |   |
|-----------|-----------------------------------|---|
| <b>A.</b> | <b><u>Minutes</u></b>             | Minutes from the September 3 and 17, 2019 Regular Commissioners Meeting |
| <b>B.</b> | <b><u>Travel and Tourism</u></b>  | Budget Amendment (BNA#013)  |
| <b>C.</b> | <b><u>Finance</u></b>             | Budget Amendment (BNA#014)  |
| <b>D.</b> | <b><u>Legal</u></b>               | Cleveland Community College/ Foothills Shooting Complex MOU             |
| <b>E.</b> | <b><u>Planning Department</u></b> | Set Public Hearing for Text Amendment Case 19-06: Garages and Carports  |
| <b>F.</b> | <b><u>Legal</u></b>               | Signatory Authorization Resolution                                      |

## **REGULAR AGENDA**

- |           |  |
|-----------|--|
| <b>6.</b> | Travel and Tourism<br><br>Emily Epley, Travel and Tourism Director |
| <b>7.</b> | Land Acquisition<br><br>Kerri Melton, Assistant County Manager     |
| <b>8.</b> | Sales Tax Referendum<br><br>Brian Epley, County Manager            |

## **BOARD APPOINTMENTS**

- |            |  |
|------------|--|
| <b>9.</b>  | Kings Mountain Planning and Zoning Board ETJ<br><br>Phyllis Nowlen, Clerk to the Board |
| <b>10.</b> | Cleveland County Veteran's Advisory Board  |

Phyllis Nowlen, Clerk to the Board

**COMMISSIONER REPORTS**

**ADJOURN**

The next meeting of the Cleveland County Board of Commissioners will be held on Tuesday, October 15, 2019 at 6:00pm in the Commissioners Chamber.

**COUNTY OF CLEVELAND, NORTH CAROLINA**

**AGENDA ITEM SUMMARY**

---

**2019 Professional Development Achievements**

---

**Department:**

**Agenda Title:** 2019 Professional Development Achievements

**Agenda Summary:** Susan Allen, Chairman

**Proposed Action:**

---

**ATTACHMENTS:**

File Name

Description

No Attachments Available

**COUNTY OF CLEVELAND, NORTH CAROLINA**

**AGENDA ITEM SUMMARY**

---

**Minority Enterprise Development Week 2019**

---

**Department:**

**Agenda Title:** Minority Enterprise Development Week 2019

**Agenda Summary:** Richard Hooker, MED Week President

**Proposed Action:**

---

**ATTACHMENTS:**

File Name

Description

No Attachments Available

**COUNTY OF CLEVELAND, NORTH CAROLINA**

**AGENDA ITEM SUMMARY**

---

**Citizen Recognition**

---

**Department:**

**Agenda Title:**

**Agenda Summary:**

**Proposed Action:**

---

**ATTACHMENTS:**

File Name

Description

No Attachments Available

# COUNTY OF CLEVELAND, NORTH CAROLINA

## AGENDA ITEM SUMMARY

---

### Minutes from the September 3 and 17, 2019 Regular Commissioners Meeting

---

**Department:** Minutes

**Agenda Title:** Minutes from the September 3 and 17, 2019 Regular Commissioners Meeting

**Agenda Summary:**

**Proposed Action:**

---

#### ATTACHMENTS:

File Name	Description
<input type="checkbox"/> 09-03-2019_Minutes.pdf	09032019 Minutes
<input type="checkbox"/> 09-17-2019_Minutes.pdf	09172019 Minutes

**Cleveland County Board of Commissioners**  
**September 3, 2019**

The Cleveland County Board of Commissioners met in a regular session on this date, at the hour of 6:00 p.m. in the Commission Chamber of the Cleveland County Administrative Offices.

**PRESENT:**       Ronnie Whetstine, Vice-Chair  
Johnny Hutchins, Commissioner  
Doug Bridges, Commissioner  
Deb Hardin, Commissioner  
Brian Epley, County Manager  
Tim Moore, County Attorney  
Phyllis Nowlen, Clerk to the Board  
Kerri Melton, Assistant County Manager  
Chris Green, Tax Administrator  
Elliot Engstrom, Senior Staff Attorney  
Lucas Jackson, Finance Director  
Allison Mauney, Human Resources Director  
Perry Davis, Emergency Management Director/Fire Marshal  
Lorie Poston, E-911 Communications Director  
Ryan Wilmoth, Emergency Medical Services Director  
Marty Gold, Information Technology Director  
Katie Swanson, Social Services Director  
Scott Bowman, Maintenance Director  
Betsy Harnage, Register of Deeds

**ABSENT:**       Susan Allen, Chairman

**CALL TO ORDER**

Vice-Chairman Whetstine called the meeting to order and Commissioner Bridges provided the invocation and led the audience in the Pledge of Allegiance.

**AGENDA ADOPTION**

**ACTION:** Commissioner Hutchins made the motion, seconded by Commissioner Bridges and unanimously approved by the Board to, ***approve the agenda as presented.***

**CITIZEN RECOGNITION**

No one registered to speak.

**CONSENT AGENDA**

**APPROVAL OF MINUTES**

The Clerk to the Board included the Minutes from the ***June 4, 2019*** and the ***June 18, 2019 regular meeting***, in board members packets.

**ACTION:** Commissioner Hutchins made a motion, seconded by Commissioner Hardin, and passed unanimously by the Board to, ***approve the minutes as written.***

**TAX ADMINISTRATION: ORDER OF COLLECTIONS 2019**

Adoption of Order directing the Tax Collector to collect taxes for 2019 and prior years. This Order is set forth in accordance with N.C.G.S. 105-321(b) and shall have the force and effect of a judgment and execution against real and personal property.




**ACTION:** Commissioner Hutchins made the motion, seconded by Commissioner Hardin, and unanimously adopted by the Board, *to approve the Order of Collection.*

State of North Carolina  
County of Cleveland  
Order of Collection

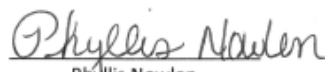
To Necole' Richard, Tax Collector:

You are hereby authorized, empowered, and commanded to collect the taxes set forth in the tax records for the year 2019, and all taxes outstanding for tax years 2009 through 2018, as filed in the office of the Tax Collector 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 Cleveland County 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, and to use or cause to be used, all remedies provided by law.

Adopted this, the 3<sup>rd</sup> day of September, 2019.

  
Susan Allen, Chair  
Cleveland County Board of Commissioners

Attest:

  
Phyllis Nowlen  
Cleveland County Clerk



**EMERGENCY MANAGEMENT: BUDGET AMENDMENT (BNA #006)**

**ACTION:** Commissioner Hutchins made a motion, seconded by Commissioner Hardin, and unanimously adopted by the Board to, *approve the following budget amendment:*

<u>Account Number</u>	<u>Project Code</u>	<u>Department/Account Name</u>	<u>Increase</u>	<u>Decrease</u>
010.437.4.350.00	NCDPS-LEPC	Emergency Management/State Grant	\$1,000.00	
010.437.5.700.00	NCDPS-LEPC	Emergency Management/Grants	\$1,000.00	

Explanation of Revisions: Budget allocation for \$1,000 in funds from the North Carolina Department of Public Safety (NCDPS) to be used to provide training, food and supplies to the local Emergency Planning Committee.

**SHERIFF'S OFFICE: BUDGET AMENDMENT (BNA #007)**

**ACTION:** Commissioner Hutchins made a motion, seconded by Commissioner Hardin, and unanimously adopted by the Board to, *approve the following budget amendment:*

<u>Account Number</u>	<u>Project Code</u>	<u>Department/Account Name</u>	<u>Increase</u>	<u>Decrease</u>
010.438.4.310.00	16738-TECH	Law Enf Grants/Fed Govt Grants	\$24,386.00	
010.438.5.211.00	16738-TECH	Law Enf Grants/Controlled Equip	\$11,236.00	
010.438.5.910.00	16738-TECH	Law Enf Grants/Capital Equip	\$13,150.00	

Explanation of Revisions: Budget allocation for \$24,386 in grant funds received from North Carolina Department of Public Safety (NCDPS) Governor's Crime Commission for purchase of items for Technology Advancement.

**HEALTH DEPARTMENT: BUDGET AMENDMENT (BNA #008)**

**ACTION:** Commissioner Hutchins made a motion, seconded by Commissioner Hardin, and unanimously adopted by the Board to, *approve the following budget amendment:*

<u>Account Number</u>	<u>Project Code</u>	<u>Department/Account Name</u>	<u>Increase</u>	<u>Decrease</u>
012.540.4.310.40		WIC/Grants	\$7,980.00	
012.540.4.310.41		WIC/Grants	\$3,490.00	
012.540.4.310.43		WIC/Grants	\$1,206.00	
012.540.5.211.40		WIC/Controlled Equipment	\$2,510.00	
012.540.5.210.40		WIC/Departmental Supplies	\$1,060.00	
012.540.5.311.41		WIC/Educational-Certif-Training	\$3,240.00	
012.540.5.581.40		WIC/Awards-Appreciation	\$4,410.00	
012.540.5.311.41		WIC/Educational-Certif-Training	\$250.00	
012.540.5.211.43		WIC Controlled Equipment	\$826.00	
012.540.5.581.43		WIC/Awards-Appreciation	\$380.00	

Explanation of Revisions: Budget allocation for \$12,676 in funds for Cleveland County WIC program. The North Carolina Department of Health and Human Services and Nutrition Services Branch as approved a special time-limited fund to the county. The funds are to be used for equipment, educational material and supplies.

### **HEALTH DEPARTMENT: BUDGET AMENDMENT (BNA #009)**

**ACTION:** Commissioner Hutchins made a motion, seconded by Commissioner Hardin, and unanimously adopted by the Board to, ***approve the following budget amendment:***

<u>Account Number</u>	<u>Project Code</u>	<u>Department/Account Name</u>	<u>Increase</u>	<u>Decrease</u>
012.548.4.540.26		SYNAR/Federal Grants	\$50,000.00	
012.548.5.121.00		SYNAR/Salaries	\$11,849.00	
012.548.5.131.00		Social Security	\$735.00	
012.548.5.132.00		Retirement	\$1,068.00	
012.548.5.133.00		Hospital Insurance	\$2,700.00	
012.548.5.134.00		Dental Insurance	\$45.00	
012.548.5.135.00		401K	\$592.00	
012.548.5.136.00		Medicare	\$172.00	
012.548.5.211.26		SYNAR/Equipment	\$3,800.00	
012.548.5.310.26		SYNAR/Travel	\$500.00	
012.548.5.370.26		SYNAR/Advertising	\$25,139.00	
012.548.5.581.26		SYNAR/Awards-Incentives	\$3,400.00	

Explanation of Revisions: Budget allocation for \$50,000 in funds awarded to the Health Department. The North Carolina Department of Health and Human Services has awarded the county these funds to conduct tobacco merchant education and environmental scans of tobacco, vape and CBD retailers in an effort to prevent underage sales of those products to minors.

### **FINANCE: AMENDMENT TO AUDIT CONTRACT**

North Carolina General Statute 159-34 requires each unit of local government in North Carolina to have its' accounts audited at the close of each fiscal year by a certified public accounting firm. When the original contracts were prepared for the audit, the Office of the State Auditor indicated that the Medicaid portion of the audit would be a separate engagement as it was for the prior year. However, after the contracts were issued and approved, additional correspondence was received from the Office of State Auditor that indicated that they were not going to require a separate report as they had for the year ending June 30, 2018. The same procedures will be performed for the audit engagement. The amendment to the contract would add \$5,500 for Medicaid testing that was originally going to be billed as separate engagement. (copy found in Minute Book \_\_\_\_\_ page \_\_\_\_\_).

**ACTION:** Commissioner Hutchins made the motion, seconded by Commissioner Hardin, and unanimously adopted by the Board, ***to approve the Amendment to the Audit Contract.***

### **LEGAL: RATIFICATION OF NONDISCLOSURE AGREEMENT**

As part of wireless E-911 services, the County may come into possession of confidential information from AT&T. The non-disclosure agreement states that the County will keep such information confidential. The

obligation to keep information confidential does not apply to information that is required by law or regulation to be disclosed. The agreement is a routine part of county operations. It must be ratified by the Board of Commissioners because the E-911 Communications Director does not possess independent authority to enter into contracts on behalf of the County. (*copy found in Minute Book \_\_\_\_\_ page \_\_\_\_\_*).

**ACTION:** Commissioner Hutchins made the motion, seconded by Commissioner Hardin, and unanimously adopted by the Board, *to approve the ratification of E-911 nondisclosure agreement.*

### **PUBLIC HEARING**

#### **MOUNTAINSIDE DRIVE ROAD PAVING ASSESSMENT**

Vice-Chairman Whetstine recognized Senior Planner Chris Martin to present the Mountainside Drive Road Paving Assessment. In 2018, a petition was received from the residents of Mountainside Drive to participate in the Road Paving Assessment Program. As part of this project, each of the twenty-five properties on Mountainside Drive will be assessed at an “equal rate per lot” to pave this street in accordance with North Carolina Department of Transportation (NCDOT) standards.

Cleveland County may finance the costs of improvements made under the supervision of NCDOT to streets in the unincorporated areas of the county, which are not a part of the state-maintained system. These streets in order to be accepted by NCDOT, shall be improved to meet the standards of the Secondary Roads Council and therefore be accepted for state maintenance.

Mr. Martin reminded Commissioners, at their last meeting, held on August 6, 2019, the Board approved a preliminary resolution describing the intent to improve Mountainside Drive, the terms of the re-payment for the property owners and set a public hearing date for September 3, 2019. The submitted petition represents eighty percent of the lots and eighty-seven percent of the road frontage, satisfying the minimum required by NCGS 153A-205. Area contractors on the NCDOT Contractor Directory, were sent a Request for Proposal (RFP) to solicit bids on this project in July 2019. The RFP was also advertised on the County’s website. The following qualified bids were received August 9, 2019:

- Sunny Day Landscaping \$189,780
- B&N Grading \$198,171
- Cleveland Contractors \$220,810.72
- Quinn Sales, Inc. \$253,150

If the final resolution is adopted, staff recommends awarding the contract to B&N Grading, Inc. for \$198,171. B&N Grading is a full-service contractor, NCDOT qualified, and has positive references from NCDOT. The County will pay the Contractor and the property owners will reimburse the County over a period of five years at 3.25% interest.

Vice-Chairman Whetstine opened the Public Hearing at 6:14 pm for anyone wanting to speak for or against the Mountainside Drive Road Paving Assessment. (*Legal Notice was published in the Shelby Star on Friday, August 23, 2019*).

**Amy Smith, 130 Mountainside Drive, Shelby** – spoke in favor of the Mountainside Drive Road Paving Assessment. Mrs. Smith reviewed the hardships and safety hazards the neighborhood has endured due to the deteriorating road conditions. She thanked the Board for their time and asked them to consider approving the final resolution.

**William Rice, 105 Mountainside Drive, Shelby** – stated when he bought his property over ten years ago, he did not know there were HOA or maintenance fees for a private road. He sympathizes with the other residents on Mountainside Drive in regards to the road conditions and the difficulty of getting their children on the school bus however, Emergency Responders, UPS, Fed-Ex and other contractors have no problems traveling on this road. He asked for an explanation as to why he has to pay back on the five-year loan when he only uses three hundred feet of the road.

**James Waseman, 122 Mountainside Drive, Shelby** – spoke in favor of the Mountainside Drive Road Paving Assessment. He thanked the Board and staff for the time and work they have put in to make this project possible. Mr. Waseman echoed Mrs. Smith's safety concerns and stated the road improvement plan will make the neighborhood travel safe again. In closing, he asked Commissioners to consider the zero percent interest rate and thirty percent discount rate that was discussed over a year ago when the road paving assessment was first started.

**Benjamin West, 140 Mountainside Drive, Shelby** – spoke in favor of the Mountainside Drive Road Paving Assessment. Mr. West lives at the very end of Mountainside Drive and this project is very important to him and his family. He reverberated the previous comments on the importance to the neighborhood for the completion of the road improvement plan. Mr. West thanked the Board for their consideration in this project.

**John Shanna, 126 Mountainside Drive, Shelby** – spoke in favor of the Mountainside Drive Road Paving Assessment. Mr. Shanna reviewed the difficulties and inconvenience the community has endured over the last year due to the worsening road conditions of Mountainside Drive.

**Jonas Hanson, 109 Mountainside Drive, Shelby** – spoke in favor of the Mountainside Drive Road Paving Assessment. Mr. Hanson reiterated the previous comments made about the road conditions and complications their neighborhood has undergone due to the road conditions declining. He thanked the Commissioners for their time and asked them to consider approving the road paving assessment.

**Julie Waseman, 122 Mountainside Drive, Shelby** – spoke in favor of the Mountainside Drive Road Paving Assessment. She outlined the financial responsibility of the homeowners who reside on Mountainside Drive and thanked the Board for their time and consideration on this project.

**William Rice, 105 Mountainside Drive, Shelby** – stated he did not want to rebut the comments made but to support the comments regarding the Board to consider the zero percent interest rate and a thirty percent discount rate that was discussed previously.

Hearing no further comments, Vice-Chairman Whetstine closed the Public Hearing at 6:34 pm.

Vice-Chairman Whetstine opened the floor to the Board for questions and discussion. Commissioner Hutchins stated he supports the paving of Mountainside Drive and reminded the Board of the incomplete requirements of the first contractor. He concluded by explaining if discounts were given, the County would not have enough funds to complete the remaining twenty-six roads that need to be paved. Commissioner Bridges advised a year and a half ago the County Manager and staff was asked to form a plan that would assist communities in the county who are in need of road paving assistance. A strategy was formed and the residents of Mountainside Drive are the first residents to be able to utilize the financing plan.

**ACTION:** Commissioner Hutchins made the motion, seconded by Commissioner Bridges, and unanimously adopted by the Board, *to adopt the Mountainside Drive Road Paving Assessment Resolution and award the bid to B&N Grading, Inc.*



**PLANNING DEPARTMENT: CASE 19-09; REQUEST TO REZONE PROPERTY FROM RESIDENTIAL (R) TO GENERAL BUSINESS CONDITIONAL DISTRICT (GB-CD) AT 735 WINN ROAD**

Vice-Chairman Whetstine called Senior Planner Chris Martin to the podium to present case 19-09; request to rezone property from Residential (R) to General Business – Conditional District (GB-CD) at 735 Winn Road. Jay



and Deborah Carpenter own the property located at 735 Winn Road which is one acre and is located south of Mooresboro near the county line. The Carpenter’s have acquired the land and wish to construct a building to operate a sign business at this location. They have submitted an application and site plan showing how the property will be used. This area is comprised mostly of rural residential uses, with a home-based auto sales business along the same road. The surrounding zoning districts include Residential, with the auto sales parcel zoned Rural Agriculture Conditional District. The Land Use Plan designates this area as future Residential.

Case 19-09 was presented to the Planning Board who voted 6-1 to recommend approving the rezoning request from Residential to General Business Conditional District with the following conditions:

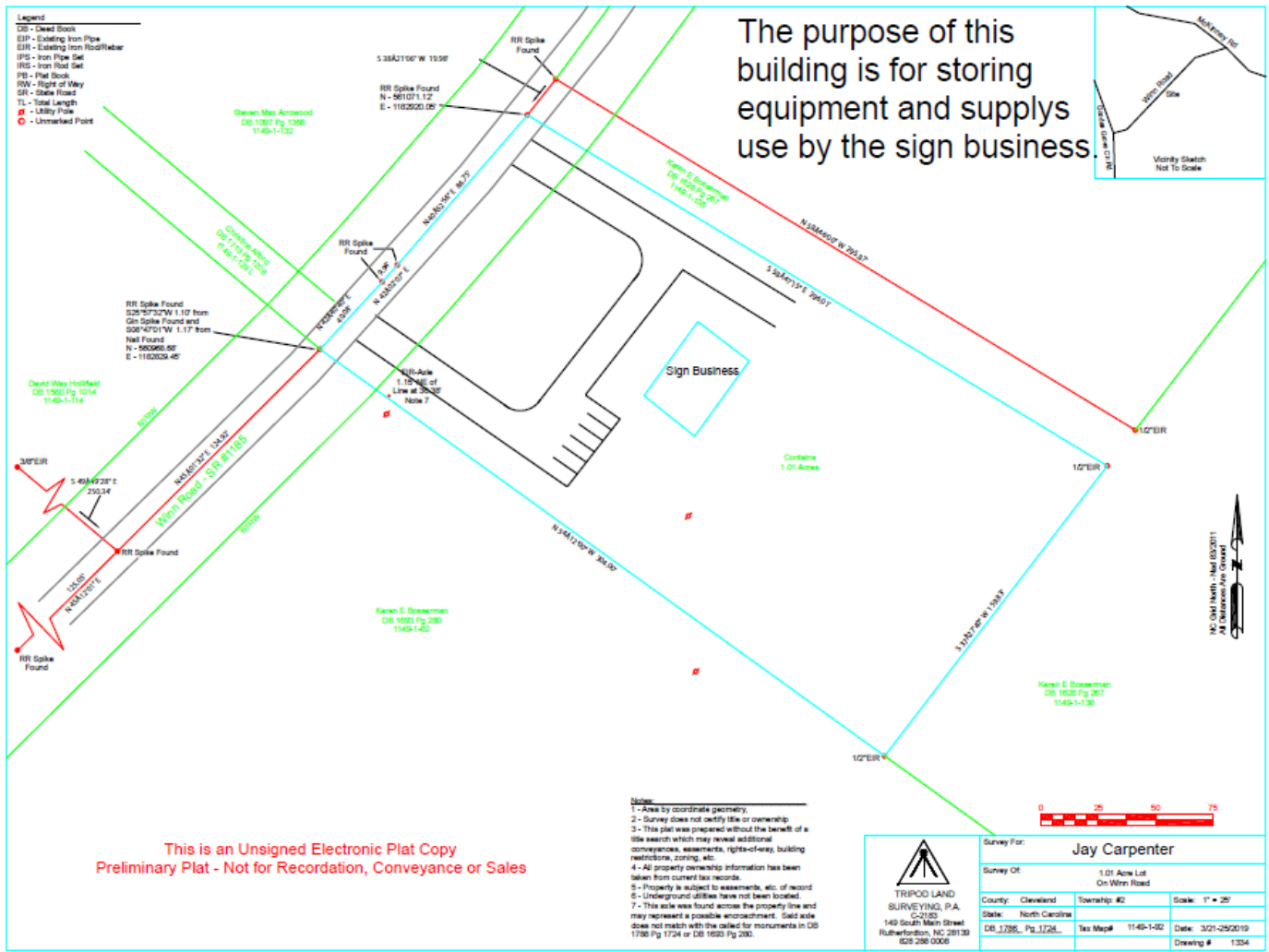
- No wall pack lighting allowed on the building or light spillage onto adjoining properties.
- Appropriate NCDOT driveway permits obtained or a waiver issued by the NCDOT.
- 4/12 pitch on the building’s roof.
- No signage other than a non-lit sign on the door or window.
- No outdoor storage of materials, except for vehicles used in the business, which can be stored behind the building.
- The footprint of the building shall not exceed 1800 square feet.
- No more than two bay doors on the front of the building.

**Case # 19-09 Re-Zoning** for 735 Winn Road R to GB-CU  
**Zoning Map, Parcel #61359 1.01 acres**



**Case # 19-09 Re-Zoning** for 735 Winn Road R to GB-CU  
**Aerial Map, Parcel #61359 1.01 acres**





Vice-Chairman Whetstine opened the Public Hearing at 6:48 pm for anyone wanting to speak for or against case 19-09; request to rezone property from Residential (R) to General Business – Conditional District (GB-CD) at 735 Winn Road. (Legal Notice was published in the Shelby Star on Friday, August 23 and Friday, August 30, 2019).

Hearing no comments, Vice-Chairman Whetstine closed the Public Hearing at 6:49 pm.

Vice-Chairman Whetstine opened the floor to the Board for questions and discussion. Commissioner Bridges stated he attended the Planning Board meeting and it was mentioned more trees needed to be planted for the property to be in compliance with the zoning conditions however, the neighbor next to 735 Winn Road has asked that no more trees be planted. He asked Mr. Martin if the Carpenter’s will be required to plant more landscaping. Mr. Martin stated the adopted county code does describe a required screening when a business district is adjoining a residential area. The existing vegetation can be used as the required screening and staff will work with both land owners to ensure they are both satisfied.

**ACTION:** Commissioner Bridges made the motion, seconded by Commissioner Hardin and unanimously approved by the Board to, *approve the request to rezone property from Residential (R) to General Business – Conditional District (GB-CD) at 735 Winn Road as the proposed use was consistent with the area around it and would not negatively impact the surrounding community.*

**REGULAR AGENDA**

**FINAL RESOLUTION INSTALLMENT FINANCING AND BUILDING ACQUISITION**

Vice-Chairman Whetstine called County Manager Brian Epley to the podium to present the Final Resolution Installment Financing and Building Acquisition. In 2016 the county completed a facility master plan which identified the Cleveland County Courthouse as heavy compression area that needed to be addressed. The



opportunity to acquire the Shelby Star building is an advantageous opportunity for the county to relieve some compression in the Courthouse. Mr. Epley reviewed the following PowerPoint with the Board.

LEASE AGREEMENT INFO

Cleveland County  
NORTH CAROLINA

Landlord: 315 East Graham (Shelby), LLC  
Tenant: Halifax Gaston/Shelby LLC

- Commencement Date: May 1, 2013 - May 1, 2033
- Rent: Approximately \$100,000 per year
- Insurance & Maintenance: Tenant has to maintain insurance for fire, property damages, and extended risk, specifically including flood damage. Tenant also has to maintain liability insurance. Landlord has no obligation to make any improvements to the leased premises.
- Terms & Lease Agreement would transfer with acquisition of property by County.
- Lease term- Shall remain the same. County may request the Lessee to vacate property given a 120-day formal notice.

Finance Recommendations

Cleveland County  
NORTH CAROLINA

YEAR	LEASE RENT	(DEBT PYMT)	NET COST
2020	\$100,000	\$ -0-	\$ 100,000
2021	\$100,000	\$ (160,000)	\$ (58,000)
2022	\$100,000	\$ (160,000)	\$ (58,000)
2023	\$100,000	\$ (160,000)	\$ (58,000)

Net Cost per square ft..... \$42

Finance Recommendations

Cleveland County  
NORTH CAROLINA

Recommended Lender - Zion Bank

- Amount Financed \$1,500,000
- 15 year Term
- No Bank Closing Cost Fees
- No penalty/premium for prepayment

- Closing Date - 9/26/19
- First Debt Payment - 9/1/20 FY 20-21
- Final Maturity - 9/1/34

- Annual Debt Service Requirements
  - Debt Service Payment - \$158,000
  - Less -Current Lease Action - (100,000)
  - Approx. Annual County Cost - \$58,000

Financing Schedule

Cleveland County  
NORTH CAROLINA

- May - Staff Property Evaluation
- June - RFP submission
- Mid July - Phase 1 Environmental Analysis
- July 30<sup>th</sup> - Review RFP responses and compare proposals
- August 6<sup>th</sup> - Public Hearing/ Consideration of winning bidder
- August 29<sup>th</sup> - Agenda deadline for September 3<sup>rd</sup> County Board meeting.
- September 3<sup>rd</sup> - County Board considers adopting Final Resolution
- September 10<sup>th</sup> -LGC considers approving financing
- September 26<sup>th</sup> - Close on financing

Preliminary Finding Resolution  
& Installment Financing Contract Package Resolution

Cleveland County  
NORTH CAROLINA

- Preliminary Finding Resolution, August 6, 2019

Approved Action Item	Pre-Approved by LGC
Public Purpose Need – Hold Public Hearing	✓
Affordability Analysis	✓
Preliminary Approval of Zion Public Finance	✓

- Installment Financing Contract Package Resolution - For Consideration September 3, 2019

Recommended Approval Items	
Approve Financing Documents	
Approve Transactional Documents	
Authorize County Staff to complete closing	

Cleveland County  
NORTH CAROLINA

Questions?

8

**ACTION:** Commissioner Hutchins made the motion, seconded by Commissioner Bridges and unanimously adopted by the Board to, *approve the Final Resolution Installment Financing and Building Acquisition.* (full copy of the Installment Financing Contract and Deed of Trust is filed in the Clerk’s office).

**COMMISSIONER REPORTS**

**Commissioner Bridges** – gave an update on the progress of the expansion at the Shelby Airport and the fencing project at the fairgrounds.

**Commissioner Hutchins** – attended the North Carolina Association of County Commissioners annual conference with Commissioner Bridges. He spoke about several of the workshops they attended. Commissioner Hutchins attended several other community board meetings on which he serves.



**Commissioner Whetstine** – spoke about the 2019 American Legion World Series and other events he attended in the county.

**ADJOURN**

There being no further business to come before the Board at this time, Commissioner Hutchins made a motion, seconded by Commissioner Bridges, and unanimously adopted by the Board, *to adjourn the meeting*. The next meeting of the Commission is scheduled for *Tuesday, September 17, 2019 at 6:00 p.m. in the Commissioners Chambers located at 311 E. Marion St., Shelby*.

---

*Ronnie Whetstine, Vice-Chairman  
Cleveland County Board of Commissioners*

---

*Phyllis Nowlen, Clerk to the Board  
Cleveland County Board of Commissioners*

**Cleveland County Board of Commissioners**  
**September 17, 2019**

The Cleveland County Board of Commissioners met in a regular session on this date, at the hour of 6:00 p.m. in the Commission Chamber of the Cleveland County Administrative Offices.

**PRESENT:** Susan Allen, Chairman  
Ronnie Whetstine, Vice-Chair  
Johnny Hutchins, Commissioner  
Doug Bridges, Commissioner  
Deb Hardin, Commissioner  
Brian Epley, County Manager  
Elliot Engstrom, Deputy County Attorney  
Phyllis Nowlen, Clerk to the Board  
Kerri Melton, Assistant County Manager  
Chris Green, Tax Administrator  
Lucas Jackson, Finance Director  
Allison Mauney, Human Resources Director  
Lorie Poston, E-911 Communications Director  
Marty Gold, Information Technology Director  
Katie Swanson, Social Services Director  
Daryl Sando, Electronic Maintenance Director  
Sandra Orvig, Shooting Range Director  
Clifton Philbeck, Board of Elections Director  
Jason Falls, LeGrand Center Director  
Scott Bowman, Maintenance Director

**CALL TO ORDER**

Chairman Allen called the meeting to order and Commissioner Whetstine provided the invocation and led the audience in the Pledge of Allegiance.

**AGENDA ADOPTION**

**ACTION:** Commissioner Hardin made the motion, seconded by Commissioner Bridges and unanimously approved by the Board to, ***approve the agenda as presented.***

**CITIZEN RECOGNITION**

No one registered to speak.

**CONSENT AGENDA**

**APPROVAL OF MINUTES**

The Clerk to the Board included the Minutes from the ***July 2, 2019*** and the ***August 6, 2019 regular meeting***, in board members packets.

**ACTION:** Commissioner Hutchins made a motion, seconded by Commissioner Bridges, and passed unanimously by the Board to, ***approve the minutes as written.***

**TAX COLLECTOR'S MONTHLY REPORT**

The Tax Collector provided Commissioners with the following detailed written report regarding taxes collected during ***August 2019.***

TOTAL TAXES COLLECTED AUGUST 2019			
YEAR	AMOUNT-REAL	AMOUNT-VEH	
DEF REV	\$0.00	\$0.00	
2019	\$37,299,771.87	\$0.00	\$37,299,771.87
2018	\$86,862.67	\$0.00	\$86,862.67
2017	\$21,048.97	\$0.00	\$21,048.97
2016	\$5,412.39	\$0.00	\$5,412.39
2015	\$2,756.60	\$0.00	\$2,756.60
2014	\$898.31	\$0.00	\$898.31
2013	\$741.95	\$153.04	\$894.99
2012	\$595.33	\$102.79	\$698.12
2011	\$304.03	\$21.33	\$325.36
2010	\$382.77	\$20.50	\$403.27
2009	\$133.53	\$0.00	\$133.53

TOTALS	\$37,418,908.42	\$297.66	\$37,419,206.08
DISCOUNT	(\$186,446.45)		
INTEREST	\$14,455.80	\$150.81	\$0.00
TOLERANCE	\$258.87	\$0.00	
ADVERTISING	\$380.00	\$104.27	
GARNISHMENT	\$1,219.21		
NSF/ATTY	\$7.96		
LEGAL FEES	\$907.44		
TOTALS	\$37,249,691.25	\$552.74	
MISC FEE	\$121.91	\$0.00	
TAXES COLL	\$37,249,813.16	\$552.74	\$37,250,365.90
	\$37,249,813.16	\$552.74	

TOTAL TAXES UNCOLLECTED AUGUST 2018			
	AMOUNT-REAL	AMOUNT-VEH	COMBINED AMT
2019	\$42,209,341.60	\$0.00	\$42,209,341.60
2018	\$1,184,444.56	\$0.00	\$1,184,444.56
2017	\$526,103.90	\$0.00	\$526,103.90
2016	\$306,907.77	\$0.00	\$306,907.77
2015	\$210,706.44	\$0.00	\$210,706.44
2014	\$188,790.87	\$0.00	\$188,790.87
2013	\$130,991.10	\$63,788.41	\$194,779.51
2012	\$100,233.69	\$72,626.11	\$172,859.80
2011	\$75,421.40	\$55,495.95	\$130,917.35
2010	\$68,154.35	\$52,987.83	\$121,142.18
2009	\$68,673.19	\$49,916.65	\$118,589.84
	\$45,069,768.87	\$294,814.95	\$45,364,583.82

### **TAX ABATEMENTS AND SUPPLEMENTS**

The Tax Assessor provided Commissioners with a detailed written report regarding tax abatements and supplements during **August 2019**. The monthly grand total of tax abatements was listed as (\$26,372.21) and monthly grand total for tax supplements was listed as \$56,163.26.

### **HEALTH DEPARTMENT: BUDGET AMENDMENT (BNA #010)**

**ACTION:** Commissioner Hutchins made a motion, seconded by Commissioner Bridges, and unanimously adopted by the Board to, ***approve the following budget amendment:***

<i>Account Number</i>	<i>Project Code</i>	<i>Department/Account Name</i>	<i>Increase</i>	<i>Decrease</i>
012.545.4.350.93		NFP/Grants	\$11,095.00	
012.545.5.210.45		NFP/Supplies	\$3,395.00	
012.545.5.311.45		NFP/Educational-Certif-Training	\$2,300.00	
012.545.5.370.45		NFP/Advertising	\$2,000.00	
012.515.5.581.45		NFP/Awards-Appreciation	\$3,400.00	

**Explanation of Revisions:** Budget allocation for \$11,095 in funds received from the North Carolina Department of Health and Human Services, Women's & Children's health section which gave the Cleveland County Health Department more than the anticipated amount in the addendum.

### **HEALTH DEPARTMENT: BUDGET AMENDMENT (BNA #011)**

**ACTION:** Commissioner Hutchins made a motion, seconded by Commissioner Bridges, and unanimously adopted by the Board to, ***approve the following budget amendment:***

<i>Account Number</i>	<i>Project Code</i>	<i>Department/Account Name</i>	<i>Increase</i>	<i>Decrease</i>
012.533.4.310.85		BCCCP/Federal Grants	\$5,470.00	
012.533.5.490.00		BCCCP/Professional Services	\$5,470.00	

**Explanation of Revisions:** Budget allocation for \$5,470 in funds awarded to the Cleveland County Health Department from the North Carolina Department of Health and Human Services for cancer screenings.

**SHERIFF’S DEPARTMENT: BUDGET AMENDMENT (BNA #012)**

**ACTION:** Commissioner Hutchins made a motion, seconded by Commissioner Bridges, and unanimously adopted by the Board to, *approve the following budget amendment:*

<i>Account Number</i>	<i>Project Code</i>	<i>Department/Account Name</i>	<i>Increase</i>	<i>Decrease</i>
010.441.4.810.39		Sheriff’s Office/Donations-Explorer’s	\$5,690.00	
010.441.5.790.39		Sheriff’s Office/Donations-Explorer’s	\$5,690.00	
<i>Explanation of Revisions: Budget allocation for \$5,690 in donations received for the Explorer’s Program for the purchase of uniforms, equipment, training, etc.</i>				

**LEGAL: BIRDSEYE ENERGY EASEMENT**

Warbler Holdings, LLC (“Warbler”) has offered to pay the County for an easement. The easement would be in favor of Duke Energy Carolinas, LLC (“Duke”) and would allow Duke to build a power line to Warbler’s future solar facility in Cleveland County. Pursuant to North Carolina General Statute § 153A-176 and North Carolina General Statute § 160A-273, the County has authority to grant easements over, through, under, or across any county property. Unlike with a sale of real property, there is no public notice requirement in order to grant an easement. Warbler recently received a permit from the Cleveland County Board of Adjustment to build a solar facility in Cleveland County. The County owns nearby property (Parcel # 58557), and Warbler has requested that the County grant an easement to Duke. The easement is designed to provide a path for an electrical line connected to an interconnection with Duke for the benefit of the Warbler solar facility. The easement is located near an economic development project on which the County has partnered with the City of Shelby. Staff for both the County and the City have reviewed the easement and do not see any risk that the easement could negatively impact the economic development project.

Cleveland County, North Carolina  
Attn: Mr. Brian Epley, County Manager  
311 E Marion Street  
Shelby, NC 28150

***RE: Right of Way for new Electrical Line Utility Easement (Cleveland County PIN #2518816572)***


Dear Mr. Epley:

Thank you for your patience and willingness to work together to get a mutually beneficial solution for an easement on the County’s property. This letter outlines the terms of the overhead utility easement and interconnection (“Easement”) in favor of Duke Energy Carolinas, LLC designed along approximately 177 feet of the County’s property located in Cleveland County, NC, being known as Cleveland County PIN #2518816572. The Easement is designed to provide a path for an electrical line connected to and an interconnection with Duke Energy for the benefit of the Warbler Holdings Solar Project located on the land specified in the Ground Lease Agreement dated June 10, 2016 between Willow Land Holdings, LLC as landlord and Warbler Holdings, LLC as tenant, as may be amended or assigned from time to time (“Lease”). Please find the drawing representing the proposed path and area of the easement in Exhibit A.


The terms of the Easement consist of the following:

1. Payment in the amount of \$10,000.00 from Warbler Holdings, LLC within ten (10) business days of the recordation of the Easement with the Cleveland County Register of Deeds.

By their execution of this letter, you and Warbler Holdings, LLC agree to the compensation terms listed above.

SINCERELY,  
Warbler Holdings, LLC  
By:   
Brian C. Bednar, President

AGREED AND ACCEPTED AS OF September 17, 2019.

Cleveland County, North Carolina  
By:   
Susan K. Allen  
Chairman

EASEMENT

Return To: Duke Energy Carolinas  
Attn: Elliott Wallace  
Address: 6325 Wilkinson Blvd.  
Charlotte, NC 28214

NORTH CAROLINA  
CLEVELAND COUNTY

THIS EASEMENT ("Easement") is made this 17<sup>th</sup> day of September, 2019 ("Effective Date"), from CLEVELAND COUNTY, a Political Subdivision of the State of North Carolina, ("GRANTOR," whether one or more), to Duke Energy Carolinas, LLC, a North Carolina limited liability company ("DEC"); its successors, licensees, and assigns.

WITNESSETH:

THAT GRANTOR, for and in consideration of the sum of ONE DOLLAR (\$1.00), the receipt and sufficiency of which are hereby acknowledged, does hereby grant unto DEC, its successors, licensees, and assigns, the perpetual right, privilege, and easement to go in and upon the land of GRANTOR situated in Number 7 Township, described as follows: PIN # 2518816572 containing 46.9 acres, more or less, and being the land described in a deed from Eugene Falls; John Bankhead; and Thomas W. Martin, Jr., Co-Executors of The Estate of Robert Z. Falls to Cleveland County, a Political Subdivision of the State of North Carolina dated , and recorded in Deed Book 1442, Page 548, Cleveland County Registry (the "Property"), LESS AND EXCEPT any prior out-conveyances, and to (i) construct, reconstruct, operate, patrol, maintain, inspect, repair, replace, relocate, add to, modify and remove electric and/or communication facilities thereon including but not limited to, supporting structures such as poles, cables, wires, guy wires, anchors, and other appurtenant apparatus and equipment (the "Facilities") within an easement area being one-hundred (100) feet long and thirty (30) feet wide and as shown as "Overhead & Ground Easement" on Exhibit A attached hereto, and (ii) construct, reconstruct, operate, patrol, maintain, inspect, repair, replace, relocate, add to, modify and remove Facilities thereon within an easement area being two (2) portions of sixty-four (64) feet long and thirteen (13) feet long respectively and both portions being thirty (30) feet wide, and as shown as "Overhead-Only Easement" on Exhibit A attached hereto; provided, however, that any Facilities installed in the Overhead-Only Easement shall be above-ground, and no Facilities may be placed or located on the ground within the Overhead-Only Easement (collectively, the "Easement Area"), for the purpose of transmitting and distributing electrical energy and for communication purposes of DEC and Incumbent Local Exchange Carriers. The centerline of the Facilities shall be the center line of the Easement Area.

The right, privilege and easement shall include the following rights granted to DEC: (a) ingress and egress over the Easement Area and over adjoining portions of the Property (using lanes, driveways and paved areas where practical as determined by DEC); (b) to relocate the Facilities and Easement Area on the Property to conform to any future highway or

street relocation, widening or improvement; (c) to trim and keep clear from the Easement Area, now or at any time in the future, trees, limbs, undergrowth, structures or other obstructions, and to trim or clear dead, diseased, weak or leaning trees or limbs outside of the Easement Area which, in the opinion of DEC, might interfere with or fall upon the Facilities; (d) to install guy wires and anchors extending beyond the limits of the Easement Area; and (e) all other rights and privileges reasonably necessary or convenient for DEC's safe, reliable and efficient installation, operation, and maintenance of the Facilities and for the enjoyment and use of the Easement Area for the purposes described herein.

Notwithstanding anything to the contrary above, It is understood and agreed that: The general location of the Easement Area is shown on the sketch attached hereto as Exhibit A and recorded herewith. The final and definitive location of the Easement Area shall become established by and upon the final installation and erection of the facilities by DEC in substantial compliance with Exhibit A hereto.

TO HAVE AND TO HOLD said rights, privilege, and easement unto DEC, its successors, licensees, and assigns, forever, and GRANTOR, for itself, its heirs, executors, administrators, successors, and assigns, covenants to and with DEC that GRANTOR is the lawful owner of the Property and the Easement Area in fee and has the right to convey said rights and Easement.

IN WITNESS WHEREOF, this EASEMENT has been executed by GRANTOR and is effective as of the Effective Date herein.

CLEVELAND COUNTY

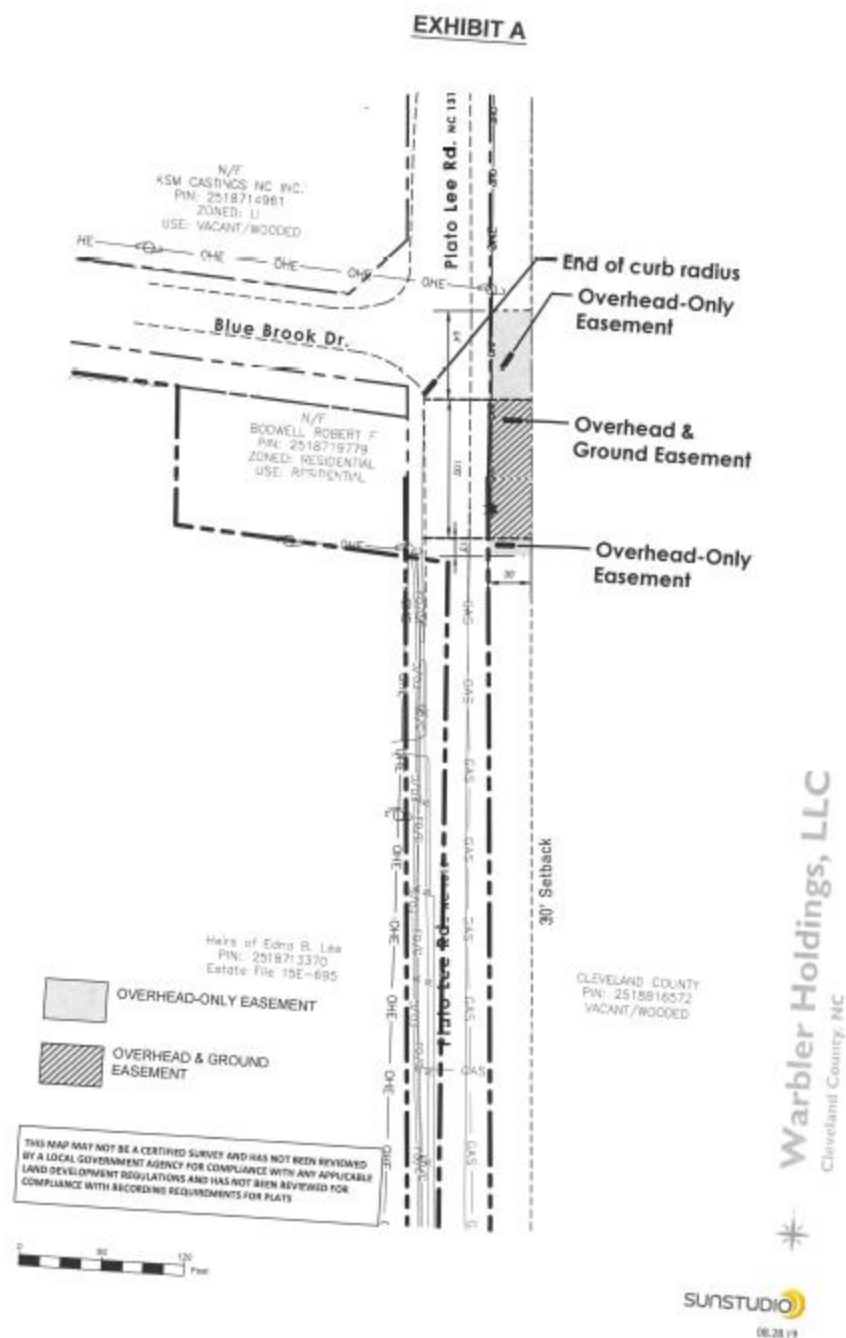
By: Susan K. Allen  
Name: Susan K Allen  
Its: Chairman

NORTH CAROLINA, Cleveland COUNTY  
I, April N Crofts, a Notary Public of Cleveland County, North Carolina, certify that Susan K Allen, Chairman of CLEVELAND COUNTY, a Political Subdivision of the State of North Carolina, personally appeared before me this day and acknowledged the due execution of the foregoing EASEMENT as Chairman of the Board of Commissioners on behalf of Cleveland County.

Witness my hand and notarial seal, this 17<sup>th</sup> day of September, 2019.



April N Crofts  
Notary Public  
My commission expires: 5-7-2020



**ACTION:** Commissioner Hutchins made a motion, seconded by Commissioner Bridges, and unanimously adopted by the Board to, *approve the Birdseye Energy Easement.*

#### **LEGAL: CANCELLATION OF JUDGEMENT**

The County has a judgment against Jimmy White in the matter of Cleveland County vs. Jimmy White, 14 CVM 500. The judgment dates to May 13, 2014 and relates to unpaid animal control citations due to roaming cattle. Mr. White has offered to pay the County one thousand dollars in order to cancel the judgment and Legal staff recommends accepting the offer.

**ACTION:** Commissioner Hutchins made a motion, seconded by Commissioner Bridges, and unanimously adopted by the Board to, *authorize the Deputy County Attorney to cancel the County's judgement in case 14 CVM 500.*

#### **COMMISSIONERS: SET PUBLIC HEARING FOR CLEVELAND COUNTY HEALTH**

#### **DEPARTMENT ADVISORY BOARD (November 5, 2019)**

Request to set a public hearing on Tuesday, November 5, 2019 to consider the transition of the Cleveland County Board of Health to an advisory board.

**ACTION:** Commissioner Hutchins made a motion, seconded by Commissioner Bridges, and unanimously adopted by the Board to, *approve scheduling the public hearing as requested.*



**HUMAN RESOURCES: APPENDIX E. PAY PLAN OF OFFICE OF CLEVELAND COUNTY**

**SHERIFF’S POLICY**

The Cleveland County Detention Division would like to restructure the supervision within the Detention Division by adding a Detention Master Corporal position. This will allow non-sworn detention officers the opportunity to achieve advancement in the career of detention within the Cleveland County Sheriff’s Department. This position will be added to Appendix E. Pay Plan of Office of Cleveland County Sheriff Policy. To ensure consistency within the Cleveland County Sheriff’s Department, the Detention Division would like to include qualifying military service to Level 2 and Level 3 for Detention Officers and Detention Corporals.

Master Corporal:   Average Corporal Salary = \$ 40,428.15  
                              6% of \$40,428.15 = \$2,425  
                              \$2,425 x 4 (1 per shift) = \$9,700

Plus, potentially percent increases:  
Level 2 = 4%  
Level 3 = 2%

Qualifying Military Service:   Average Detention Officer Salary = \$35,969.14  
  Level 2 = 4%  
  Level 3 = 2%

**ACTION:** Commissioner Hutchins made a motion, seconded by Commissioner Bridges, and unanimously adopted by the Board to, *approve Appendix E. Pay Plan of Office of Cleveland County Sheriff’s Policy.*

<p>APPENDIX E. - PAY PLAN OF OFFICE OF CLEVELAND COUNTY SHERIFF POLICY</p> <p>The following pay plan applies to all full-time employees of the Cleveland County Sheriff's Office.</p> <p>Section 1. - Definitions for purposes of this pay plan only (listed alphabetically).</p> <p>(1) <i>Advanced certificate.</i> An "advanced certificate" acquired from the North Carolina Department of Justice.</p> <p>(2) <i>Associates degree.</i> For the purposes of this policy, an associate's degree is a two-year degree from an accredited educational institution, consisting of sixty (60) or more hours of credit from a technical school, community college, college, or university. The degree document must state that it is an associate's degree.</p> <p>(3) <i>Bachelor's degree.</i> For the purposes of this policy, a bachelor's degree is any four-year degree from an accredited educational institution, consisting of one hundred twenty (120) or more hours from a college or university. The degree document must state that it is a bachelor's degree.</p> <p>(4) <i>Intermediate certificate.</i> An "intermediate certificate" acquired from the North Carolina Department of Justice.</p> <p>(5) <i>Military service:</i> Service in any branch of the U.S. Armed Forces. In order for military service to entitle an employee to credit for such service in accordance with this pay plan, the following criteria must be met:</p> <p>(a) The employee must have completed/fulfilled all obligations of his/her enlistment in any of the U.S. Armed Forces: and</p> <p>(b) The employee must have received an honorable discharge after completion of all military contracts, or, in some rare cases, a medical discharge. In cases of medical discharge, a departmentally independent panel will review and determine eligibility for credit for such service based on employee's length of time served, and circumstances surrounding his or her discharge.</p> <p>(6) <i>Years employed by Cleveland County Sheriff's Office.</i> The total years (i.e., total completed months of employment by Cleveland County Sheriff's Office divided by twelve (12), during which an employee has worked for the Cleveland County Sheriff's Office. Only completed years of service will be considered.</p> <p>(7) <i>Years of service.</i> The total years (i.e., total completed months of employment divided by twelve (12)) during which an employee has worked for any governmental law enforcement agency in North Carolina, including job experience elsewhere than for Cleveland County. These years do not need to be consecutive. Only complete years of service will be considered.</p> <p>(Ord. of 9-18-18(2))</p> <p>Section 2. - Classifications.</p> <p>Employees will be subject to the following classifications, based on job title, certifications, years of employment by a governmental law enforcement agency in North Carolina, and educational attainment. Based on these criteria, employees will be classified into the "levels" set forth below:</p> <p>(a) <i>Administrative personnel.</i> The following applies to all employees in the sheriff's office employed as "administrative support assistant" or "administrative assistant":</p> <p>(1) <i>Level 1:</i> Employment before attainment of Levels 2 or 3.</p> <p>(2) <i>Level 2:</i> Four (4) years of service in an administrative position for a governmental law enforcement agency in North Carolina; or three (3) years of such service and an associate's degree; or any such service and a bachelor's degree.</p> <p>(3) <i>Level 3:</i> Seven (7) years of service in an administrative position for a governmental law enforcement agency; or four (4) years of such service and an associate's degree; or two (2) years of such service and a bachelor's degree.</p>	<p>(b) <i>Detention officer.</i> The following applies to all employees in the sheriff's office employed as "detention officer":</p> <p>(1) <i>Level 1:</i> Employment before attainment of Levels 2 or 3.</p> <p>(2) <i>Level 2:</i> Four (4) years of service for a governmental law enforcement agency position for a governmental law enforcement agency in North Carolina; or two (2) years of such service and an associate's degree; or any such service and a bachelor's degree <b>or any qualifying military service.</b></p> <p>(3) <i>Level 3:</i> Seven (7) years of such service; or six (6) years of such service and an associate's degree; or two (2) years of such service and a bachelor's degree <b>or any qualifying military service.</b></p> <p>(c) <i>Detention corporal.</i> The following applies to all employees in the sheriff's office employed as "detention corporal ":</p> <p>(1) <i>Level 1:</i> Employment before attainment of Levels 2 or 3.</p> <p>(2) <i>Level 2:</i> Three (3) years of service in a detention corporal position for a Cleveland County Sheriff's Office or one (1) year of such service and an associate's degree, or any such service and a bachelor's degree <b>or any qualifying military service.</b></p> <p>(3) <i>Level 3:</i> Seven (7) years of service in the role of detention corporal; or five (5) years of service in the role of detention corporal and an associate's degree; or two (2) years of service in the role of detention corporal and a bachelor's degree <b>or any qualifying military service.</b></p> <p>(d) <i>Deputy.</i> The following applies to all employees in the sheriff's office employed as "deputy":</p> <p>(1) <i>Level 1:</i> Employment before attainment of Levels 2 or 3.</p> <p>(2) <i>Level 2:</i> Four (4) years of service in the role of deputy for a governmental law enforcement agency; or two (2) years of such service and an associate's degree; or any such service and a bachelor's degree or any qualifying military service.</p> <p>(3) <i>Level 3:</i> Two (2) years employed by the Cleveland County Sheriff's Office and any of the following: Seven (7) years of service; or six (6) years of service and an associate's degree; or two (2) years of service and a bachelor's degree or any qualifying military service.</p> <p>(4) <i>Level 4:</i> Two (2) years employed by the Cleveland County Sheriff's Office and an advanced certificate and any of the following: Thirteen (13) years of service; or ten (10) years of service and an associate's degree; or six (6) years of service and a bachelor's degree or any qualifying military service.</p> <p>(e) <i>Investigator.</i> The following applies to all employees in the sheriff's office employed as "investigator":</p> <p>(1) <i>Level 1:</i> Employment before attainment of Levels 2 or 3.</p> <p>(2) <i>Level 2:</i> (Four) 4 years of service with Cleveland County in the role of investigator; or three (3) years of service with Cleveland County in the role of investigator and an associate's degree; or any such service and a bachelor's degree or any qualifying military service.</p> <p>(3) <i>Level 3:</i> Intermediate certificate and: Seven (7) years of service with Cleveland County in the role of investigator; or four (4) years of service with Cleveland County in the role of investigator and an associate's degree; or two (2) years of service with Cleveland County in the role of investigator and a bachelor's degree or any qualifying military service.</p> <p><b>(f) Detention Master Corporal. The following applies to all employees in the sheriff's office employed as "detention Master Corporal ":</b></p> <p><b>(1) <i>Level 1:</i> Employment before attainment of Levels 2 or 3.</b></p>
--	---

- (2) **Level 2:** Four (4) years of service with Cleveland County in the role of detention master corporal ; or two (2) years of such service and an associate's degree, or any such service and a bachelor's degree or any qualifying military service.
- (3) **Level 3:** Seven (7) years of service with Cleveland County in the role of detention master corporal; or five (5) years of service with Cleveland County in the role of detention master corporal and an associate's degree; or two (2) years of service with Cleveland County in the role of detention master corporal and a bachelor's degree or any qualifying military service.

- (f) *Sergeant.* The following applies to all employees in the sheriff's department employed as "sergeant":
- (1) *Level 1:* Employment before attainment of Levels 2 or 3.
- (2) *Level 2:* Four (4) years of service with Cleveland County in the role of sergeant; or three (3) years of service with Cleveland County in the role of sergeant and an associate's degree; or such service and a bachelor's degree or any qualifying military service.
- (3) *Level 3:* Advanced certificate and any of the following: Eight (8) years of service with Cleveland County in the role of sergeant; or six (6) years of service with Cleveland County in the role of sergeant and an associate's degree; or three (3) years of service with Cleveland County in the role of sergeant and a bachelor's degree or any qualifying military service.
- (g) *Lieutenant.* The following applies to all employees in the sheriff's office employed as "lieutenant":
- (1) *Level 1:* Employment before attainment of Levels 2 or 3.
- (2) *Level 2:* Four (4) years of service with Cleveland County in the role of lieutenant; or three (3) years of service with Cleveland County in the role of lieutenant and an associate's degree; or any such service with a bachelor's degree or any qualifying military service.
- (3) *Level 3:* Advanced certificate and any of the following: Eight (8) years of service with Cleveland County in the role of lieutenant; or six (6) years of service with Cleveland County in the role of lieutenant and an associate's degree; or three (3) years of service with Cleveland County in the role of lieutenant and a bachelor's degree or any qualifying military service.
- (h) *Captain.* The following applies to all employees in the sheriff's office employed as "captain":
- (1) *Level 1:* Employment before attainment of Levels 2 or 3.
- (2) *Level 2:* Advanced certificate and any of the following: Four (4) years of service with Cleveland County in the role of captain; or three (3) years of service with Cleveland County in the role of captain and an associate's degree; or any such service and a bachelor's degree or any qualifying military service.
- (i) *Major.* The following applies to all employees in the sheriff's office employed as "major":
- (1) *Level 1:* Employment before attainment of Level 2.
- (2) *Level 2:* Advanced certificate and any of the following: Four (4) years of service with Cleveland County in the role of major; or three (3) years of service with Cleveland County in the role of major and an associate's degree; or any such service and a bachelor's degree or any qualifying military service.

(Ord. of 9-18-18(2))

Section 3. - Promotional increases in compensation.

Employees will be classified according to their positions and fulfillment of the foregoing criteria. When an employee has fulfilled the requirements of any "level" beyond "level 1" of his/her position, then he/she will be given a promotional increase in compensation based on the chart below. Each employee

shall inform the sheriff in writing of attainment of the certificate or degree on the basis of which the employee wishes a new classification to be based, and shall provide the sheriff with a complete copy of such certificate and/or evidence of award of the degree. (The department may require as much as thirty (30) days from compliance with this provision to implement the new classification.) The percentages set forth in the "promotional increase chart" below will be applied to the annual compensation that the employee is being paid in accordance with the "Cleveland County Pay Scale" that is in effect as of the date(s) of implementation of such promotional increases.

Promotional Increase Chart				
Position	Grade	Level 2 Increase	Level 3 Increase	Level 4 Increase
Administration	6, 8, 12	4% of current compensation	2% of current compensation	None
Detention officer	9	4% of current compensation	2% of current compensation	None
Deputy	11	4% of current compensation	2% of current compensation	6% of current compensation
Investigator	12	4% of current compensation	2% of current compensation	None
Detention Master Corporal	13	4% of current compensation	2% of current compensation	None
Sergeant	14	4% of current compensation	2% of current compensation	None
Investigator Sergeant	15	4% of current compensation	2% of current compensation	None
Lieutenant	16	4% of current compensation	2% of current compensation	None
Investigator Lieutenant	17	4% of current compensation	2% of current compensation	None
Captain	18	6% of current compensation	None	None
Major	21	6% of current compensation	None	None

(Ord. of 9-18-18(2))

Section 4. - Position incentives.

In addition to the promotional increases in compensation that will be awarded based on the criteria set forth above, selected sheriff's department employees will be paid additional monetary incentives to reward the performance of specified duties. These incentives will be awarded and paid on a semi-annual basis, and will be paid only as set forth below. Such incentives will be based on the "salary low" compensation that pertains to an employee's position that is set forth in the "Cleveland County Pay Scale" that is in effect as of the date(s) of payment of such incentives (regardless of the annual compensation that the employee is then actually being paid).

Employees employed in the following divisions will be paid a non-discretionary incentive payment ("incentive payment") of one and one-half (1.50) percent on a semi-annual basis (which amounts to three (3) percent annually): The Narcotics Division and the Criminal Investigative Division.

Employees employed in the following divisions or jobs will be paid an incentive payment of seventy-five hundredths of one (0.75) percent on a semi-annual basis (which amounts to one and one-half (1.50) percent annually): Community Interdiction Team Division, K-9 Division, and Field Training Officers.

No incentive payment shall be paid to an employee whose employment, regardless of reason, has come to an end as of the date of an incentive payment.

Employees employed in the Special Emergency Response Team ("SERT"), as defined by a roster maintained by the office of the sheriff, will be paid an incentive payment of one-half of one (0.5) percent on a semi-annual basis (which amounts to one (1) percent annually).

Provided, however, that any employee who has worked in one (1) of the foregoing positions or divisions for fewer than three (3) complete consecutive months shall be ineligible for such an incentive payment. If an employee has worked in one (1) of the foregoing positions for more than three (3) but fewer than twelve (12) complete consecutive months, then he/she is eligible for a pro-rated incentive payment based on the number of complete consecutive months worked in his/her role. For example, if an employee has worked in the narcotics division for eight (8) such months, then he/she is eligible for an incentive payment equal to (8 months/12 months) x 3% = (66.66) x 3% = two percent (2%).

With the exception of employees employed in the SERT, employees may qualify for only one (1) an incentive payment at any given time, and will be paid whichever potential incentive payment is greater. (For example, if an employee is a field training officer in the narcotics division, then he/she would qualify for the [one and] one-half (1.5) percent an incentive payment on a semi-annual basis (which will amount to three (3) percent if payable over two (2) consecutive semi-annual payments.) Employees employed in the SERT will be eligible for the SERT an incentive payment regardless of eligibility for any other incentive payments.

(Ord. of 9-18-18(2))

REGULAR AGENDA

RULES OF PROCEDURE

Chairman Allen called Deputy County Attorney Elliot Engstrom to the podium to present the Rules of Procedure. North Carolina General Statute § 153A-41 authorizes the Board of Commissioners to adopt “its own rules of procedure.” Recently, the UNC School of Government published new recommended rules of procedure for local governments. Legal staff has reconciled these changes with the current rules of procedure for the Cleveland County’s Board of Commissioners. The result is a set of rules that largely maintains the current rules of procedure while incorporating modern best practices. The new proposed rules have been edited to ensure they do not unnecessarily change any of the Board’s current practices such as:

- The proposed rules maintain the practice of the County manager presiding over organization meetings in a year where the outgoing chair has lost his or her seat on the Board.
- The proposed rules maintain the practice of requiring a second on any motion.
- The proposed rules maintain the current rule that where a board member has not been excused from voting on a matter, that member’s failure to vote is recorded as an affirmative.



Mr. Engstrom reviewed the following the PowerPoint to the Board.

# Updated Rules of Procedure


CLEVELAND COUNTY BOARD OF COMMISSIONERS



Elliot Engstrom,  
Deputy County Attorney  
SEPTEMBER 17, 2019

## Rules of Procedure

WHAT ARE THEY?




- G.S. 153A-41 authorizes the Board of Commissioners to adopt "its own rules of procedure."
- These rules can take a variety of forms.


BOARD OF COMMISSIONERS 2

## Rules of Procedure

WHAT ARE THEY?




- School of Government publishes recommended rules of procedures.



BOARD OF COMMISSIONERS 3

## Why update now?

A FEW HIGHLIGHTED CHANGES




- Board would benefit from UNC School of Government's expertise and editing process.
- Current rules are in paper form with references made in ink pen. Updating would simplify reading the rules.
- Proposed rules codify appointment process.
- Proposed rules clarify who may attend closed sessions.

BOARD OF COMMISSIONERS 4

## Why update now?

THINGS NOT CHANGING




- Proposed rules maintain practice of the County Manager presiding over organizational meeting when necessary.
- Proposed rules maintain practice of requiring a second on any motion.
- Proposed rules maintain rule that where board member has not been excused from voting on a matter, that member's failure to vote is recorded as an affirmative.

BOARD OF COMMISSIONERS 5

## Animal Services

CHANGES TO CHAPTER 3 OF CODE



- Questions?
- Action Requested:
  - Adopt the proposed rules of procedure by a majority vote.

BOARD OF COMMISSIONERS 6

**ACTION:** Commissioner Whetstine made the motion, seconded by Commissioner Hutchins and unanimously adopted by the Board to, ***approve the proposed rules of procedure as presented.*** (Full copy of the Rules of Procedure is filed in the Clerk's Office).

### **REAL PROPERTY TRANSACTION PLATO LEED ROAD**

Chairman Allen recognized Greg Pering, County Engineer, to present the real property transaction for Plato Lee Road. Cleveland County owns parcel 58557 which is located between Washburn Switch Rd and Plato Lee Road. It is 46.9 acres of wooded and grass lands with a stream splitting the property. The suggested use of property is a shell building. The property is directly across from KSM Castings on Plato Lee and directly behind Clearwater Paper Site One. Cleveland County and the City of Shelby have partnered on several Shell Buildings such as:



- City and County completed Shell Building I in 2011
  - Schletter purchased 2012
- City and County completed Shell Building II in 2014
  - Ivar's purchased 2015
- City and County partner on Shell Building III plans in 2018
  - Greenheck Purchased in 2019

Cleveland County and the City of Shelby have discussed a partnership for Shelby Building IV. Benefits of this property collaboration include:

- New substation north of the property- minimal infrastructure improvements required
- Future 74 bypass entrance on Washburn Switch
- Phase I Environmental and Wetlands Delineation completed
- Property suitable for multiple shell buildings

As with the previous Shell Building partnerships, the City of Shelby will be the project manager. To manage the project, the property must be deeded to the City of Shelby. The City will purchase the property from Cleveland County for half of the purchase price of \$133,500. The following PowerPoint was presented to the Board.



## REAL PROPERTY TRANSACTION PLATO LEE ROAD

## OVERVIEW

- ACREAGE: 46.906
- PURCHASE PRICE: \$267,000
- WOODED AND GRASS LANDS
- ZONING: HEAVY INDUSTRIAL
- NEIGHBORS:
  - KSM
  - CLEARWATER
  - MODERN DENSIFYING



SEPTEMBER 17, 2019 COMMISSIONERS MEETINGS

## BENEFITS OF DEVELOPMENT



- UTILITIES: NEW SUBSTATION NORTH OF PROPERTY
- FUTURE 74 BY PASS ENTRANCE ON WASHBURN SWITCH ROAD
- PHASE 1 ENVIRONMENTAL SITE ASSESSMENT COMPLETED
- WET LANDS DELINIATION COMPLETED
- CREEK SPLITING PROPERTY
- PROPERTY SUITABLE FOR MULTIPLE SHELL BUILDINGS

SEPTEMBER 17, 2019 COMMISSIONERS MEETINGS

## SHELL BUILDING HISTORY

- 2009 City/County Purchased Foothill Commerce Center land equally
- Foothill Commerce Center officially opened in 2010 – NC Certified Site through NC Commerce
- City and County completed Shell Building I in 2011
  - Schletter purchased 2012
- City and County completed Shell Building II in 2014
  - Ivar's purchased 2015
- 2018- City and County partner on Shell Building III plans
  - Greenheck Purchased in 2019




SEPTEMBER 17, 2019 COMMISSIONERS MEETINGS

## SHELL BUILDING IV PROJECT DETAILS

- Project equal partnership between the City of Shelby and Cleveland County
- City of Shelby- Project Manager
- Cleveland County Commissioners sell property to City of Shelby for ½ of purchase price- \$133,500
- Infrastructure Requirements- sewerline extension
- Interlocal agreement to be drafted between the City of Shelby and Cleveland County



SEPTEMBER 17, 2019 COMMISSIONERS MEETINGS

## CONCEPTUAL DRAWING



SEPTEMBER 17, 2019 COMMISSIONERS MEETINGS

## PROJECT TIMELINE

- December 2019– Bid Packets released to Pre-Qualified Contractors
- February 2020 – Bid Opening, 2:00pm at Shelby City Hall
- March 2020 – Construction Begins
- September 2020 – Estimated Substantial Completion Date

SEPTEMBER 17, 2019 COMMISSIONERS MEETINGS

## ACTION ITEM

Commissioners adopt resolution approving the sale of Parcel 58557 to the City of Shelby for a purchase price of \$133,500 and authorizes County Manager to develop interlocal agreement for construction of Shell Building IV

SEPTEMBER 17, 2019 COMMISSIONERS MEETINGS

Chairman Allen opened the floor to the Board for questions and discussion. Commissioner Hutchins stated previous shell building agreements have resulted in good partnerships with the City of Shelby and this collaboration shouldn't be any different. Chairman Allen explained, with the continued growth of economic development, many of the bid packages received are looking for established shell buildings and the county has been very successful with those types of buildings.

**ACTION:** Commissioner Hutchins made the motion, seconded by Commissioner Bridges and unanimously adopted by the Board to, *approve the resolution authorizing the sale of Parcel 58557 to the City of Shelby for a purchase price of \$133,500 and also authorizes the County Manager to develop an interlocal agreement for construction of Shell Building IV.*



### **ANIMAL SERVICES ORDINANCE**

Chairman Allen called Deputy County Attorney Elliot Engstrom to the podium to present the Animal Services Ordinance. Should this ordinance be approved, Animal S will be moved from the Health D and will become a standalone department supervised by the County Manager's office. The Cleveland County Code of Ordinances currently designates the Health Director as the supervisor of animal services. The animal services director position is being changed to a department head level position. Certain changes must be made to the code of ordinances to accommodate this change including:




- Clarifying the difference between the animal services director and an animal control officer
- Shifting supervision of animal services from the health director to the animal services director, who will be a department head supervised by the county manager
- Creating an animal services advisory and appeals board to hear dangerous dog appeals and advise the Board of Commissioners on animal services issues
- Clarifying that the health director still must fulfill his or her statutory duties regarding rabies prevention

Mr. Engstrom reviewed the following PowerPoint to the Board.

Updates to Animal Ordinance


CLEVELAND COUNTY BOARD OF COMMISSIONERS



Elliot Engstrom,  
Deputy County Attorney  
SEPTEMBER 17, 2019

Animal Services

NEW DEPARTMENT




- Animal services is now a department of the County, rather than a unit of the Health Department.
- New animal services director reports to the County Manager, similar to:
  - Building inspections
  - Communications
  - Planning
  - Finance

BOARD OF COMMISSIONERS

2

Animal Services

CHANGES TO CHAPTER 3 OF CODE




- Clarifying the difference between the animal services director and an animal control officer;
- Shifting supervision of animal services from the health director to the animal services director;
- Clarifying that the health director must still fulfill his or her statutory duties regarding rabies prevention.
- Creation of animal services advisory and appeals board to hear dangerous dog appeals and advise the Board of Commissioners on animal services issues.

BOARD OF COMMISSIONERS

3

Animal Services

CHANGES TO CHAPTER 3 OF CODE



- Questions?
- Actions Requested:
  - Adopt the ordinance by a unanimous vote of all members.
  - Adopt the resolution creating the animal services advisory and appeals board by a majority vote.

BOARD OF COMMISSIONERS

4

Chairman Allen opened the floor to the Board for questions and discussion. Commissioner Whetstine commented on transitioning Animal Services to a stand alone department stating it was a good move since that department has increasingly grown in size and services to the community.

**ACTION:** Commissioner Hardin made a motion, seconded by Commissioner Whetstine, and approved unanimously by the Board to, *adopt the resolution creating the animal services advisory and appeals board and approve the Animal Ordinance changes.* (copy of lease found in Minute Book \_\_\_\_\_ page \_\_\_\_\_.)



## Resolution

Resolution 19-2019

### RESOLUTION CREATING CLEVELAND COUNTY ANIMAL SERVICES ADVISORY AND APPEALS BOARD (G.S. 153A-76; G.S. 153A-77(a); G.S. 67-4.1(a))

**Whereas**, N.C.G.S. § 153A-76 authorizes the Board of Commissioners to generally organize county government in order to promote the orderly and efficient administration of county affairs; and

**Whereas**, N.C.G.S. § 153A-77(a) authorizes the Board of Commissioners to appoint advisory boards composed of qualified and interested residents to study, interpret, and develop community support and cooperation in activities conducted by or under the authority of the Board of Commissioners; and

**Whereas**, N.C.G.S. § 67-4.1(c) requires the Board of Commissioners to designate a person or board to be responsible for determining when a dog shall be deemed “dangerous” and a separate board to hear any appeal;

**Whereas**, the Board of Commissioners have, through an ordinance passed on the same day as this resolution, designated the animal services director as the person to be responsible for determining when a dog shall be deemed dangerous;

**Whereas**, the Board of Commissioners is convened in a regular meeting;

**Now Therefore Be It Resolved**; the Cleveland County Board of Commissioners resolves that:

1. There is hereby created a Cleveland County Animal Services Advisory and Appeals Board composed of five (5) initial members, those members being the veterinarian member of the board of health, the assistant county manager, the senior staff attorney, the health director, and the optimization coordinator; and

2. The terms of the five initial members shall expire on December 31, 2019, before which time the Board of Commissioners shall provide by a separate resolution for the board’s membership after that date;
3. The Cleveland County Animal Services Advisory and Appeals Board shall have the duties of (a) advising the Board of Commissioners on issues related to animal services and (b) hearing any appeals of dangerous dog determinations made by the animal services director.

**Adopted this the 17<sup>th</sup> day of September, 2019.**



By:

*Susan K. Allen*  
Susan K. Allen  
Chairman, Cleveland County Board of Commissioners

Attest:

*Phyllis Nowlen*  
Phyllis Nowlen  
Clerk to the Board

## COMMISSIONER REPORTS

**Commissioner Hardin** – went to the Isothermal Planning and Development Commission work session on economic development. She and other Commissioners also attended the Parade of Table fundraising event for the Council on Aging.

**Commissioner Bridges** – advised September 17<sup>th</sup> is Constitution Day and reviewed the importance of this date.

**Commissioner Hutchins** – attended the HAM Radio Fest last weekend that was held at the fairgrounds. He also attended several other board meetings on which he serves and gave an updated on the upcoming Veteran’s Day Parade and the Foothills Shooting Complex expansion project.

**Commissioner Whetstine** – walked in the Walk for Life fundraising event for the pregnancy resources center. He also attended several other fundraising events that benefit the community.

**Chairman Allen** – went to the American Red Cross building open house along with the other Commissioners.

**ADJOURN**

There being no further business to come before the Board at this time, Commissioner Bridges made a motion, seconded by Commissioner Hardin, and unanimously adopted by the Board, *to adjourn the meeting*. The next meeting of the Commission is scheduled for *Tuesday, October 1, 2019 at 6:00 p.m. in the Commissioners Chambers located at 311 E. Marion St., Shelby*.

---

*Susan Allen, Chairman  
Cleveland County Board of Commissioners*

---

*Phyllis Nowlen, Clerk to the Board  
Cleveland County Board of Commissioners*

**COUNTY OF CLEVELAND, NORTH CAROLINA**

**AGENDA ITEM SUMMARY**

---

**Travel and Tourism: Budget Amendment (BNA#013)**

---

**Department:** Travel and Tourism  
**Agenda Title:** Budget Amendment (BNA#013)  
**Agenda Summary:**  
**Proposed Action:**

---

**ATTACHMENTS:**

File Name	Description
<input type="checkbox"/> BNA013.pdf	TRAVEL & TOURISM: BUDGET AMENDMENT (BNA#013)

## BUDGET NEW - ORDINANCE AMENDMENT

BNA # 013SUBMITTED TO BOARD OF COUNTY COMMISSIONERS  
FOR CONSIDERATION AT MEETING TO BE HELD ON:October 1, 2019

FROM: BUDGET OFFICER

THRU: FINANCE OFFICE

FOR DEPT: Travel & TourismDATE: 9/18/2019

SIGNATURES:

  
Finance Director  
Department Manager

Account Number	Project Code	Department	Account Name	Increase	Decrease
010.422.4.510.61		Travel & Tourism	Travel & Tourism Events-Sponsors	\$ 2,000.00	
010.422.5.510.00		Travel & Tourism	Travel & Tourism Events	\$ 2,000.00	

Explanation of Revisions Budget sponsorship funds committed from NC Dept of Natural and Cultural Resources for the 2019 Mush,  
Music & Mutts Festival.

THE ABOVE AMENDMENT HAS BEEN APPROVED AND RECORDED IN THE MINUTES OF THE COUNTY  
 COMMISSIONERS' MEETING ON \_\_\_\_\_  
 (Date)

\_\_\_\_\_  
Phyllis Nowlen, Clerk to the BoardRETURN TO FINANCE OFFICE and Forward copy via email to [Tonya.Sigmon@clevelandcounty.com](mailto:Tonya.Sigmon@clevelandcounty.com)

cc: Personnel Batch # \_\_\_\_\_  
 cc: Purchasing Date: \_\_\_\_\_  
 By: \_\_\_\_\_



## Tonya Sigmon

---

**From:** Emily Epley <Emily.Epley@clevelandcounty.com>  
**Sent:** Wednesday, September 18, 2019 8:52 AM  
**To:** Tonya Sigmon  
**Subject:** FW: Come Hear NC Sponsorship of 2019 Mush, Music & Mutts Festival  
**Attachments:** State\_of\_North\_Carolina\_Sub\_W-9\_01292019.pdf

Tonya,

Thank you so much! I have forwarded the entire email as he has provided details about the fields in case there is anything outside of the ordinary. This is for a \$2000 grant from the NC Arts Council for Come Hear North Carolina. They are helping provide the music for the Festival this year.

Emily

**From:** Owens, Bill <bill.owens@ncdcr.gov>  
**Sent:** Friday, September 6, 2019 10:50 AM  
**To:** Emily Epley <Emily.Epley@clevelandcounty.com>  
**Cc:** Armes, Cynthia <Cynthia.Armes@ncdcr.gov>  
**Subject:** Come Hear NC Sponsorship of 2019 Mush, Music & Mutts Festival

Emily:

Following is a great deal of information for the three documents that are required for the Department of Natural and Cultural Resources' Main Stage Sponsorship of the 2019 Mush, Music & Mutts Festival on behalf of the Department's Come Hear NC music initiative. Just work your way through completing each document, and please contact me if you have any questions along the way.

### **Professional Services Contract 1481**

Attached is the professional services contract for the sponsorship. The majority of the text is standard contract boilerplate. Please review the contract closely, particularly Item 4: Scope of Services to be Rendered. If anything requires revision or is problematic, please contact me and we can work together to resolve your concern(s). If necessary, I can revise the contract and email a revised copy to you.

If the contract is acceptable as written, please sign/date the contract on page 7. Please scan the entire contract (all 8 pages) and email the PDF digital copy to me. I will obtain the necessary Department of Natural and Cultural Resources' signatures. I will email a PDF copy of the fully executed contract to you for your files.

### **NC Substitute W-9 Form**

The North Carolina Office of State Controller requires all vendors/entities to submit a completed copy of the new NC Substitute W-9 form in order to receive payment from North Carolina state agencies. Attached is a digital copy of the form with instructions. Since you want to register Cleveland County Travel and Tourism as a separate entity, complete only the front (first) page of the form.

If you have Adobe Acrobat, you should be able to complete the form digitally online. Note that some versions of Acrobat do not interface well with the form template. If you are unable to complete the form digitally online, please print out the form and complete it by hand. Note that the information you provide on the NC Substitute

W-9 should match the information that will be on the invoice that you submit to the Department for the sponsorship.

Information is required in each of the following sections/items: Section 1 – Taxpayer Identification (Items 1, 2, 4, 6, 8, 9, 12, 13) and Section 2 – Certification (name, title, signature, and date).

Pay particular attention to the following:

- 1) Section 1, Item 1. Check the appropriate box for the type of Federal tax ID number you provide in Item 2.
- 2) Section 1, Item 2. Enter Cleveland County's Federal tax ID number (566000288) here.
- 3) Section 1, Item 4. Enter the legal name (the name as shown on the County's Federal income tax return). The Federal W-9 that you submitted lists this name as "County of Cleveland, North Carolina."
- 4) Section 1, Item 5. This is where you would enter "/DBA/Cleveland County Travel and Tourism".
- 5) Section 1, Item 6. Enter the legal address for the County. This is the address on the County's Federal tax return. Someone in your financial affairs office should be able to tell you whether to enter the Marion Street or Post Office Box address here.
- 6) Section 1, Item 7. Enter for the payment remittance address (if it differs from the legal address provided in item 6). I am assuming the remittance address is P.O. Box 1210. If this is the same as what you entered in Item 6, you can leave Item 7 blank.
- 7) Section 1, Item 8 and Item 9. Enter the contact name and telephone number for the person completing the NC Substitute W-9 form (To be used if we have questions about information provided in the form).
- 8) Section 1, Item 12. Check the box for the County's Federal tax entity type. If you check the "other" box, please enter the type of "other" on the line provided (probably "Government").
- 9) Section 1, Item 13. Check the box for the County's Federal tax entity classification (probably "NC Local Govt"). If you check the "other" box, please enter the type of "other" (for example, "County Govt").
- 10) Section 2. Enter Printed Name, Printed Title, Signature, and Date.

Please scan the completed NC Substitute W-9 and email a PDF digital copy of the completed form to me.

## **Sponsorship Invoice**

When you submit the contract to me for Departmental signatures, you can go ahead and submit an invoice to me for payment of the sponsorship. The invoice should include the following elements:

- 1) A unique invoice number
- 2) The date
- 3) A description statement similar to: "Main Stage Sponsorship of Mush, Music & Mutts Festival 2019 as specified in Professional Services Contract 1481"
- 4) The amount due: \$2,000.00
- 5) A "bill to" statement. "Bill to: DNCR Accounts Payable  
4605 Mail Service Center  
Raleigh, NC 27699-4605"
- 6) A "remit to: statement. "Remit to: Cleveland County Travel and Tourism  
P.O. Box 1210"

Shelby, NC 28151-1210"

[Use the remittance address entered on the NC Substitute W-9.]

If you have any questions about completing the contract, the NC Substitute W-9 form, or the invoice, you can contact me by telephone (919-814-6733), by cell (919-592-5979), and by email ([bill.owens@ncdcr.gov](mailto:bill.owens@ncdcr.gov)).

Thank you for going through this process to enable the Department to pay you for the sponsorship!

All the best,

Bill

**William A. Owens, Jr.**  
Procurement Specialist II  
NC Dept. of Natural and Cultural Resources  
4605 Mail Service Center  
Raleigh, North Carolina 27699-4605

919-814-6733      *office*  
919-733-6993      *fax*  
[bill.owens@ncdcr.gov](mailto:bill.owens@ncdcr.gov)



NC DEPARTMENT OF  
NATURAL AND CULTURAL RESOURCES

*Email correspondence to and from this address is subject to the  
North Carolina Public Records Law and may be disclosed to third parties.*

---

[Facebook](#) [Twitter](#) [Instagram](#) [YouTube](#)

**CONFIDENTIALITY STATEMENT:**

This electronic communication from Cleveland County is confidential, privileged, and intended solely for the use of the recipient named above. If you're not the intended recipient, or the employee or agent responsible for delivering this information to the intended recipient, and have received this communication in error, please notify the sender immediately. Unauthorized disclosure, copying, distribution or other use of the contents of this electronic communication is strictly prohibited.

# COUNTY OF CLEVELAND, NORTH CAROLINA

## AGENDA ITEM SUMMARY

---

**Finance: Budget Amendment (BNA#014)**

---

**Department:** Finance

**Agenda Title:** Budget Amendment (BNA#014)

**Agenda Summary:**

**Proposed Action:**

---


### ATTACHMENTS:

File Name	Description
<input type="checkbox"/> BNA014_10.01.19.pdf	CAP PROJ-SHELBY STAR:BUDGET AMENDMENT (BNA014)

## BUDGET NEW - ORDINANCE AMENDMENT

BNA # 014SUBMITTED TO BOARD OF COUNTY COMMISSIONERS  
FOR CONSIDERATION AT MEETING TO BE HELD ON:October 1, 2019FROM: BUDGET OFFICER  
THRU: FINANCE OFFICE  
FOR DEPT: Cap Proj-Shelby Star  
DATE: 9/18/2019

SIGNATURES:

  
Finance Director\_\_\_\_\_  
Department Manager

Account Number	Project Code	Department	Account Name	Increase	Decrease
487.246.4.400.00		Cap Proj-Shelby Star	Loan Proceeds	\$ 1,610,000.00	
487.246.5.490.00		Cap Proj-Shelby Star	Professional Services	\$ 110,000.00	
487.246.5.980.00		Cap Proj-Shelby Star	C/O-Building	\$ 1,500,000.00	

Explanation of Revisions Budget loan to cover purchase of Shelby Star property and professional services associated with project.THE ABOVE AMENDMENT HAS BEEN APPROVED AND RECORDED IN THE MINUTES OF THE COUNTY  
COMMISSIONERS' MEETING ON \_\_\_\_\_  
(Date)\_\_\_\_\_  
Phyllis Nowlen, Clerk to the BoardRETURN TO FINANCE OFFICE and Forward copy via email to [Tonya.Sigmon@clevelandcounty.com](mailto:Tonya.Sigmon@clevelandcounty.com)cc: Personnel Batch # \_\_\_\_\_  
cc: Purchasing Date: \_\_\_\_\_  
By: \_\_\_\_\_

**\$1,610,000**  
**Installment Financing Contract,**  
**dated September 24, 2019,**  
**between Zions Bancorporation, N.A. and**  
**the County of Cleveland, North Carolina**

\* \* \* \* \*

**MEMORANDUM OF LEGAL PAPERS**

\* \* \* \* \*

Pre-Closing      September 23, 2019  
and Closing:      September 24, 2019

Transcripts are to be distributed as follow:

County of Cleveland, North Carolina  
Tim Moore Law Offices  
Davenport & Company LLC  
North Carolina Local Government Commission  
Robinson, Bradshaw & Hinson, P.A.  
Zions Bancorporation, N.A.

#### Basic Financing Documents

1. Executed copy of the Installment Financing Contract, dated September 24, 2019 (the "Contract"), between Zions Bancorporation, N.A. (the "Lender") and the County of Cleveland, North Carolina (the "County").
2. Copy of the executed Deed of Trust and Security Agreement, dated September 24, 2019 (the "Deed of Trust"), from the County to a trustee for the benefit of the Lender, as recorded by the Register of Deeds of the County.

#### Documents Relating to Approval of Financing

3. Copies, certified by the Clerk to the Board of Commissioners for the County (the "Board") to be true copies, of the minutes of the meetings of the Board on August 6 and September 3, 2019.
4. Publisher's affidavit evidencing publication of a notice of public hearing in The Star required by G.S. §160A-20.
5. Copy, certified by the Secretary of the LGC to be a true copy, of the action taken by the LGC on September 10, 2019 in approving the Contract.

#### Closing Documents

6. Copy of commitment to issue title insurance policy.
7. Certificate of County.
8. Certificate of Lender.
9. Investment letter of Lender.
10. Receipt for Amount Advanced.
11. Letter from County to Joint Legislative Committee on Local Government, dated July 9, 2019.
12. Closing Memo

#### Opinions of Counsel

13. Opinion of Tim Moore Law Offices.
14. Opinion of Robinson, Bradshaw & Hinson, P.A., Special Counsel.

## CERTIFICATE OF COUNTY

The undersigned officers of the County of Cleveland, North Carolina (the "County"), DO HEREBY CERTIFY:

1. The County is a body corporate and politic and a political subdivision of the State of North Carolina (the "State") under the Constitution and laws of the State.

2. On September 3, 2019 the Board of Commissioners for the County passed a resolution (the "Resolution") authorizing, among other things, the appropriate officials to the County to execute and deliver an Installment Financing Contract, dated September 24, 2019 (the "Contract"), between Zions Bancorporation, N.A. (the "Lender") and the County, and a Deed of Trust and Security Agreement, dated September 24, 2019 (the "Deed of Trust"), from the County to a trustee for the benefit of the Lender.

3. The Resolution has not been amended or supplemented and is valid and in full force and effect on the date hereof.

4. The below-named persons were on the date of the execution of the Contract and the Deed of Trust (collectively the "Documents") and are on the date hereof the duly elected or appointed and qualified incumbents of the respective offices of the County set forth opposite their names and the signatures set forth opposite their names are their genuine signatures:

<u>NAME</u>	<u>TITLE</u>	<u>SIGNATURE</u>
Susan K. Allen	Chair of the Board of Commissioners	_____
Brian Epley	County Manager	_____
Phyllis Nowlen	Clerk to the Board of Commissioners	_____

5. To the best of our knowledge after reasonable investigation, the County is not in default under or in violation of (i) any of the Documents or (ii) any indenture, mortgage, lien, agreement, contract, deed, lease, loan agreement, note, order, judgment, decree or other instrument or restriction of any kind or character to which it is a party or by which it or its properties are or may be bound, or to which it or any of its assets is subject, other than the Documents, which default would have a material adverse effect on the condition, financial or otherwise, of the County. In addition, to the best of our knowledge after reasonable investigation, neither the execution and delivery of any of the Documents nor compliance with the terms, conditions and provisions thereof will conflict in any material respect with or result in a breach of, or constitute a default under, any of the foregoing, nor will they result in the creation or imposition of any pledge, lien, charge or encumbrance whatsoever upon the Mortgaged Property (as such term is defined in the Documents), except for Permitted Encumbrances (as such term is defined in the Documents).



6. Except as hereinafter provided, since June 30, 2018, there have not been any material adverse changes in the business, properties, financial position or results of operations of the County, whether or not arising from transactions in the ordinary course of business.

7. There is no claim, action, suit, proceeding, inquiry or investigation, at law or in equity, before or by any court, governmental agency, or public board or body, pending of which the County has been served with a summons, summons and complaint or other notice of commencement or, to the best of our knowledge after reasonable investigation, threatened (i) contesting the corporate existence or powers of the County or the titles of the officers of the County to their respective offices, (ii) seeking to prohibit, restrain or enjoin the collection of revenues by the County or the application of the Amount Advanced (as defined in the Contract) under the Contract wherein an unfavorable decision, ruling or finding would materially adversely affect the financial position of the County or the operation of its facilities or the validity or enforceability of the Documents, or (iii) contesting or affecting the validity of the Documents or the transactions contemplated thereby.

WITNESS our hands as of September 24, 2019.

---

Brian Epley  
County Manager

---

Phyllis Nowlen  
Clerk to the Board of Commissioners

## CERTIFICATE OF LENDER

The undersigned officer of Zions Bancorporation, N.A. (the "Lender"), in connection with the Installment Financing Contract, dated September 24, 2019 (the "Contract"), between the Lender and the County of Cleveland, North Carolina (the "County"), HEREBY CERTIFIES as follows:

1. The Contract was executed on behalf of the Lender by the person whose name and office appear below. Such person was at the time of the execution of the Contract and now is the duly qualified and acting incumbent of his or her office and was authorized to execute the Contract. The signature appearing after the name of such person is a true and correct specimen of such person's genuine signature.

Name

Office

Signature

2. The Lender is authorized to act as a party under the Contract and perform all of its obligations in connection with the Contract, and in so acting is not in violation of any provision of its articles of association or bylaws, any law, regulation or court or administrative order or any agreement or other instrument to which it is a party or by which it may be bound.

3. The Lender by proper corporate action has duly authorized the execution and delivery of the Contract and the performance of the Lender's obligations thereunder.

IN WITNESS WHEREOF, the undersigned has hereunto set his hand as of September 24, 2019.

**ZIONS BANCORPORATION, N.A.**

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

[Letterhead of Lender]

September 24, 2019

Board of Commissioners for the  
County of Cleveland, North Carolina

Robinson, Bradshaw & Hinson, P.A.  
Charlotte, North Carolina

\$1,610,000  
Installment Financing Contract,  
dated September 24, 2019,  
between Zions Bancorporation, N.A.  
and the County of Cleveland, North Carolina

Ladies and Gentlemen:

In connection with the Installment Financing Contract, dated September 24, 2019 (the "Contract"), between Zions Bancorporation, N.A. (the "Lender") and the County of Cleveland, North Carolina (the "County"), the undersigned hereby acknowledges and represents that: (i) the Lender is familiar with the County; (ii) the Lender has been furnished certain financial information about the County; (iii) the County has made available to the Lender the opportunity to obtain additional information to verify the accuracy of the information supplied and to evaluate the merits and risks of entering into the Contract; and (iv) the Lender has had the opportunity to ask questions of and receive answers from representatives of the County concerning the terms and conditions of the Contract and the information supplied to the Lender.

The undersigned acknowledges and represents that it has been advised that the County's obligation to pay installment payments under the Contract (the "Installment Payments") is not registered under the Securities Act of 1933, as amended (the "1933 Act"), and that the County is not presently required to register such obligation under Section 12 of the Securities and Exchange Act of 1934, as amended (the "1934 Act"). The Lender, therefore, realizes that if and when the Lender wishes to sell or assign part or all of the Installment Payments that there may not be available current financial information about the County, and the Lender realizes that the County may, but is not under any obligation to, provide current financial information in the event of the sale or assignment of all or part of the Installment Payments at some subsequent time. Further, the Lender understands that it may need to bear the risks of this investment for an indefinite

period of time, since any sale or assignment of the Installment Payments may not be possible or, if possible, may be at a price below that which the Lender is paying for the Installment Payments.

It is understood that the Lender, as a sophisticated lender, has undertaken to verify the accuracy, completeness and truth of any statements made concerning any of the material facts relating to this transaction, including information regarding the financial condition of the County, from the information it has requested and received as a result of the Lender having attached significance thereto. The Lender has conducted its own investigation to the extent it deemed necessary. The Lender has been offered an opportunity to have made available to it any and all such information that it might request ~~has requested~~ from the County. On this basis, the Lender hereby acknowledges that the Lender is not relying on any party or person, including Tim Moore, Esq., as County Attorney, or Robinson, Bradshaw & Hinson, P.A., as special counsel to the County (except for the matters addressed in the written opinions of such counsel), other than the County to furnish or verify information relating to this transaction other than the legal opinions that are customarily provided with tax-exempt financing transactions and that will be provided in conjunction with the Installment Payments.

The Lender further acknowledges and represents that it is entering into the Contract for its own account, with the present intent to hold the right to receive Installment Payments for the full term of the Contract and with no intention of sale or distribution thereof.

Very truly yours,

**ZIONS BANCORPORATION, N.A.**

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

**RECEIPT  
FOR AMOUNT ADVANCED**

I, Lucas Jackson, the Finance Director of Cleveland County, North Carolina (the 'County'), in connection with the execution and delivery of the Installment Financing Contract, dated September 24, 2019 (the 'Contract'), between Zions Bancorporation, N.A. (the 'Lender') and the County, DO HEREBY CERTIFY that the County has received \$1,610,000 from the Lender, representing the Amount Advanced (as defined in the Contract).

WITNESS my hand this 24th day of September 2019.

\_\_\_\_\_  
Finance Director

[Letterhead of County Attorney]

September 24, 2019

Zions Bancorporation, N.A.  
Salt Lake City, Utah

Board of Commissioners for the  
County of Cleveland, North Carolina

Robinson, Bradshaw & Hinson, P.A.  
Charlotte, North Carolina

\$1,610,000  
Installment Financing Contract,  
dated September 24, 2019,  
between Zions Bancorporation, N.A.  
and the County of Cleveland, North Carolina

Ladies and Gentlemen:

I am the County Attorney for the County of Cleveland, North Carolina (the "County") and have served in such capacity in connection with the authorization, execution and delivery by the County of an Installment Financing Contract, dated September 24, 2019 (the "Contract"), between Zions Bancorporation, N.A. (the "Lender") and the County. In connection with this opinion, I have reviewed (i) the Constitution and laws of the State of North Carolina (the "State"), (ii) certain proceedings taken by the Board of Commissioners for the County, including a resolution passed by said Board on September 3, 2019 approving the Contract and a Deed of Trust (as each such term is defined in said resolution), (iii) forms of the Contract and the Deed of Trust-Lease (collectively the "Documents") and (iv) such other information and documents as I have deemed relevant in order to render this opinion.

On the basis of such examination, I am of the opinion that:

1. The County is a political subdivision of the State, duly and validly created, organized and existing under the Constitution and laws of the State, and has full legal right, power and authority to enter into and perform its obligations under the Documents and to consummate the transactions contemplated thereby.

2. The Documents have been duly authorized by the County and, assuming due execution and delivery by the County and due authorization, execution and delivery by the other parties thereto, constitute valid and binding agreements of the County, enforceable in accordance with their respective terms, except as such enforceability may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or other laws relating to or affecting the enforcement of creditors' rights generally, now or hereafter in effect, or by such principles of equity as a court having jurisdiction may impose. ~~In addition, no opinion is expressed with respect to the indemnification provisions of the Documents.~~

3. To the best of my knowledge, all consents, approvals or authorizations of any governmental entity and all filings required on the part of the County in connection with the authorization, execution and delivery of the Documents and the consummation of the transactions contemplated thereby have been obtained and are in full force and effect to the extent that they are obtainable as of the date hereof and I expect that the County will obtain in due course every other such consent, approval, authorization or filing.

4. To the best of my knowledge after reasonable investigation, the execution and delivery of the Documents and compliance with the provisions thereof, under the circumstances contemplated thereby, do not and will not in any material respect conflict with, constitute on the part of the County a breach of or default under, or result in the creation of a lien on any property of the County (except as contemplated therein) pursuant to, any agreement or other instrument to which the County is a party, or any existing law, regulation, court order or consent decree to which the County is subject.

5. There is no action, suit, proceeding or governmental investigation at law or in equity before or by any court, public board or body, pending of which the County has been served with a summons, summons and complaint or other notice of commencement, or, to the best of my knowledge after reasonable investigation, threatened against the County, challenging the validity of any of the Documents or contesting the power and authority of the County to execute and deliver any of the Documents or to consummate the transactions contemplated thereby.

6. All required public hearing requirements regarding the acquisition, construction and installation of the projects financed by the Contract applicable to the County have been fulfilled by the County.

7. The Deed of Trust was recorded on the date hereof in the office of the Register of Deeds of Cleveland County. Such recording is effective in accordance with State law. Investors Title Insurance Company has issued a title insurance commitment for a mortgagee title insurance policy with respect to the property covered by the Deed of Trust which insures the Lender as the beneficiary under the Deed of Trust. All the requirements and conditions to be complied with as set forth in that title insurance commitment for the issuance of that policy have been satisfied and fully performed, and no exceptions shall appear on the final policy other than the exceptions which appear in Schedule B of that title insurance commitment.

This opinion is for the sole benefit of the Lender, any assignee of the Contract and the other persons to whom it is addressed and may not be relied upon by any other person without my prior written consent.

Very truly yours,

Cleveland County Attorney



September 24, 2019

Board of Commissioners for the  
County of Cleveland, North Carolina

Zions Bancorporation, N.A.  
Salt Lake City, Utah

\$1,610,000  
Installment Financing Contract,  
dated September 24, 2019,  
between Zions Bancorporation, N.A.  
and the County of Cleveland, North Carolina

Ladies and Gentlemen:

We have acted as special counsel to the County of Cleveland, North Carolina (the "County") in connection with the authorization, execution and delivery of an Installment Financing Contract, dated September 24, 2019 (the "Contract"), between Zions Bancorporation, N.A. (the "Lender") and the County pursuant to Section 160A-20 of the North Carolina General Statutes, as amended. Under the Contract, the County has agreed to repay the amount advanced to it under the Contract, with interest, in installments (the "Installment Payments"). As security for the payment of Installment Payments, the County executed a Deed of Trust and Security Agreement on September 24, 2019 (the "Deed of Trust") that grants a lien on certain real property on which certain improvements financed by the Contract are to be located.

As to questions of fact material to our opinion, we have relied upon representations contained in various transaction documents, certified proceedings and other certifications of public officials and others furnished to us, without undertaking to verify the same by independent investigation. We have examined such law and such certified proceedings and other papers as we have deemed necessary to render this opinion.

Based on the foregoing, we are of the opinion that under existing law each of the Contract and the Deed of Trust has been duly authorized, executed and delivered by the County and, assuming due authorization, execution and delivery of the Contract by the Lender, is a valid and binding obligation of the County, enforceable upon the County. We note, however, that the covenants of the County in the Contract and the Deed of Trust relating to indemnification are given to the extent permitted by law; however, any unenforceability of indemnification will not render the Contract or the Deed of Trust invalid as a whole or preclude the obligation of the County to make the Installment Payments as required therein.

The enforceability of the Contract and the Deed of Trust may be limited by bankruptcy, insolvency, reorganization, moratorium, fraudulent conveyance and other similar laws affecting

Board of Commissioners for the  
County of Cleveland, North Carolina  
Zions Bancorporation, N.A.  
September 24, 2019  
Page 2

---

creditors' rights generally, by equitable principles (whether considered at law or in equity), and by the exercise of judicial discretion.

This opinion does not cover any matters of title or priority of liens.

We express no opinion herein regarding federal, state or local tax consequences arising with respect to the Installment Payments.

In rendering this opinion, we have relied upon the opinion of Tim Moore Law Offices with respect to the execution and delivery by the County of the Contract and the Deed of Trust.

This opinion is given as of the date hereof, and we assume no obligation to update or supplement this opinion to reflect any facts or circumstances which may hereafter come to our attention or any changes in law which may hereafter occur.

Respectfully submitted,

Document comparison by Workshare 10.0 on Wednesday, September 18, 2019  
8:44:01 AM

Input:	
Document 1 ID	iManage://WORKSITE/WSACTIVE/12375525/2
Description	#12375525v2<WSACTIVE> - Closing Documents-Cleveland 2019 IFC
Document 2 ID	iManage://WORKSITE/WSACTIVE/12375525/3
Description	#12375525v3<WSACTIVE> - Closing Documents-Cleveland 2019 IFC
Rendering set	Standard

Legend:	
<u>Insertion</u>	
<del>Deletion</del>	
<del>Moved from</del>	
<u>Moved to</u>	
Style change	
Format change	
<del>Moved deletion</del>	
Inserted cell	
Deleted cell	
Moved cell	
Split/Merged cell	
Padding cell	

Statistics:	
	Count
Insertions	19
Deletions	17
Moved from	1
Moved to	1
Style change	0
Format changed	0
Total changes	38

# COUNTY OF CLEVELAND, NORTH CAROLINA

## AGENDA ITEM SUMMARY

---

### Cleveland Community College/ Foothills Shooting Complex MOU

---

**Department:** Legal

**Agenda Title:** Cleveland Community College/ Foothills Shooting Complex MOU

**Agenda Summary:**

**Proposed Action:**

---

#### ATTACHMENTS:

File Name	Description
<input type="checkbox"/> Foothills_MOU_Staff_Report.docx	College/Range MOU Staff Report
<input type="checkbox"/> DRAFT_Foothills_Shooting_Complex_MOU_.pdf	DRAFT College/Range MOU

COUNTY OF CLEVELAND  
STATE OF NORTH CAROLINA

## MEMORANDUM OF UNDERSTANDING

This MEMORANDUM OF UNDERSTANDING is dated the \_\_\_\_ of September, 2019, and is entered into by and between CLEVELAND COUNTY, NORTH CAROLINA, a political subdivision of the State of North Carolina (the "County") and CLEVELAND COMMUNITY COLLEGE, a community college of the State of North Carolina (the "College").

### WITNESSETH

WHEREAS, the County and the College have agreed that the College will hold In-Service Training at the Foothills Public Shooting Complex Training Center (the "Training Center") and use the Foothills Public Shooting Complex (the "Complex") for firearms training;

WHEREAS, these training may occur on days that the Complex is not open to the general public.

NOW THEREFORE, the parties wish to set forth their agreements and understandings in this Memorandum of Understanding:

#### 1. RANGE FEES

The County and the College have agreed to a fee of \$25.00 (twenty-five dollars) to open the range per day, as needed.

#### 2. RANGE SAFETY OFFICER

The Complex will provide a Range Safety Office for the scheduled time for the use of the Complex by the College. An hourly rate will be assessed to the College for the Range Safety Officer. The rate of fee for the Range Safety Officer will be no less than \$14.39 per hour and no greater than \$19.97 per hour.

#### 3. DUTIES OF RANGE SAFETY OFFICER

The sole duty of the Range Safety Officer is to enforce the rules of the complex. The Range Safety Officer will not conduct business on behalf of the College, meaning that the Range Safety Officer will not be required to set up and tear down targets or offer assistance with the In-Service Training Class being conducted by the College.



IN WITNESS WHEREOF, the parties hereto have caused this Memorandum of Understanding to be executed in their corporate names by their duly authorized officers, all as of the date first above written:

\_\_\_\_\_  
Brian Epley, County Manager

ATTEST

\_\_\_\_\_

\_\_\_\_\_  
College

ATTEST

\_\_\_\_\_

DRAFT

**COUNTY OF CLEVELAND, NORTH CAROLINA**

**AGENDA ITEM SUMMARY**

---

**Set Public Hearing for Text Amendment Case 19-06: Garages and Carports**

---

**Department:** Planning Department

**Agenda Title:** Set Public Hearing for Text Amendment Case 19-06: Garages and Carports

**Agenda Summary:**

**Proposed Action:**

---

**ATTACHMENTS:**

File Name	Description
<input type="checkbox"/> 19-06_Staff_Report_October_2019.pdf	Staff Report
<input type="checkbox"/> Section_12-138_Accessory_building_update_draft_for_garages_and_carports_for_case_19-06.pdf	Language

## STAFF REPORT

To: Cleveland County Board of Commissioners      Date: September 25, 2019  
From: Chris Martin, Senior Planner  
Via: Henry Earle, Planner  
Subject: Text Amendment Case 19-06: Garages and Carports

Summary Statement: The Planning Board has submitted recommended approval of amendment language for Section 12-138 of the Cleveland County Unified Development Ordinance (UDO).

Review: At the February 5, 2019 Commissioner meeting, the Board asked staff and the Planning Board to craft language that would create standards to allow detached garages and carports to be located within the front yard of a residence. At their September 24, 2019 meeting the Planning Board voted to approve language to be sent to the Board for its consideration. The crafted code allows for detached garages and carports to be placed within the front side of a primary residence under the following conditions:

- The garage/carport may be no larger than 50% of the square footage of the principal building's footprint.
- 100' setback from the street right of way, and observation of all other principal building setbacks.
- Only one (1) garage/carport allowed in the front side yard per parcel.

### Pros:

- Will allow greater flexibility for location of garages/carports on residential lots
- Gives standards for a common zoning request

### Cons:

- Enforcement difficulties
- 

### Recommendations:

- Planning Board: The Planning Board voted to recommend approval of the amendment language.

## **Proposed Text Amendment Allowing Detached Garages/Carports within the Front-Side Yard of Residential Lots**

### **Sec. 12-138. - Location of accessory buildings on residential lots.**

- (a) On any residential lot, accessory buildings and structures shall not be located in any front yard required for principal buildings, shall not cover more than thirty (30) percent of any rear yard required for the principal building, and shall be at least twenty (20) feet from any building used for human habitation on adjoining lots. **Exceptions to this rule include detached garages and carports, used for operable tagged cars, which are allowed within the front side yard of any principal dwelling, under the following conditions:**
  - 1. Garages and/or carports may be no larger than 50% of the square footage of the principal building's footprint.**
  - 2. The garage or carport shall observe a minimum setback of one hundred (100) feet from the street right-of-way and shall observe all other principal dwelling setbacks, as stated in 12-173.**
  - 3. Only one (1) garage or carport may be placed in the front side yard per parcel.**
- (b) Accessory buildings designed or used for human habitation as may be permitted by this chapter shall be located no closer to the principal building than thirty (30) feet and shall meet the side yard requirements for the district in which located.
- (c) A double garage, one-half (½) of which would be located on each of two (2) lots, shall be permitted in any residential district, provided a written request signed by both parties is submitted with the building permit application.
- (d) On any lot or tract in the RA district, accessory buildings and structures shall be at least twenty (20) feet from any building used for human habitation on adjoining lots.
- (e) Outdoor swimming pools shall be protected by a fence or equal enclosure, a minimum of four (4) feet in height, equipped with a self-locking and positive self-latching gate provided with hardware for permanent locking. This enclosure is intended to protect against potential drowning by restricting access to swimming pools.
- (f) See also section 12-174, accessory building setback requirements.

#### **Sec. 12-174. - Accessory building setback requirements.**

Accessory buildings in the R, RM, and RR districts shall meet a setback requirement of at least five (5) feet. Accessory buildings located in the RA district shall meet a setback requirement of at least ten (10) feet. These structures shall not be located in any front ~~or side~~ yard, **except in compliance with section 12-138(a)**, and shall not cover more than thirty (30) percent of the rear yard.

See also section 12-138, location of accessory buildings on residential lots.

#### **Sec. 12-21. - Definitions of basic terms.**

- ***Carport:*** a shelter for a motor vehicle, or motor vehicles, consisting of a roof supported on posts.
- ***Front Side Yard:*** The area of a lot located between the front plane of a primary structure and the road right of way, while also being between either side plane of the primary structure and the corresponding side property line. See illustration in section 12-138.
- ***Garage:*** a building, with a large door opening to the outside, used for parking and/or storing motor vehicles.



**COUNTY OF CLEVELAND, NORTH CAROLINA**

**AGENDA ITEM SUMMARY**

---

**Signatory Authorization Resolution**

---

**Department:** Legal

**Agenda Title:** Signatory Authorization Resolution

**Agenda Summary:**

**Proposed Action:**

---

**ATTACHMENTS:**

File Name		Description
<input type="checkbox"/>	DRAFT_Signatory_Authorization_Resolution_Staff_Report.pdf	Signatory Authorization

## **STAFF REPORT**

To: Cleveland County Board of Commissioners      Date: September 26, 2019  
From: Elliot Engstrom, Deputy County Attorney  
Subject: Signatory Authorization Resolution

### **Summary Statement:**

Proposed resolution delegates authority to Commissioner Johnny Hutchins to sign intergovernmental agreement with Catawba Indian Nation on behalf of Cleveland County.

### **Review:**

The County has agreed in principal on an intergovernmental agreement with the Catawba Indian Nation. This agreement deals with the provision of County services to the Nation's proposed entertainment complex. It deals with issues such as public health, public safety, land use, and other matters.

State statutes authorize the Board of Commissioners to delegate the power to execute this agreement to a board member. The attached resolution authorizes Commissioner Hutchins to sign this document at the appropriate time.

### **Attachment:**

- Proposed resolution, including intergovernmental agreement.

### **Action Requested**

- Pass the proposed resolution.

###

**Resolution Authorizing Board Member to Execute  
Intergovernmental Agreement with Catawba Indian Nation  
on Behalf of Cleveland County**

WHEREAS, N.C.G.S. § 153A-11 authorizes the County to enter into contracts; and

WHEREAS, N.C.G.S. § 153A-12 authorizes the Board of Commissioners to exercise the powers and functions of the County, including the power to enter into contracts;

WHEREAS, N.C.G.S. § 153A-12 further authorizes the Board of Commissioners to pass resolutions as to how its powers and functions are to be exercised, including the delegation of such powers and functions;

WHEREAS, the Catawba Indian Nation (the “Nation”) is seeking to develop an entertainment complex (the “Project”) on lands located in Cleveland County;

WHEREAS, the County and the Nation have a mutual interest in promoting cooperation between the County and the Nation that will provide for the general welfare of all people in the County and within the proposed Project site with respect to issues including public finance, health and safety, and land use and development;

WHEREAS, the Parties have worked together to develop an intergovernmental agreement (the “Agreement”) intended to facilitate such cooperation, an unexecuted draft copy of which is attached to this Resolution as “Exhibit A.”

THEREFORE, THE CLEVELAND COUNTY BOARD OF COMMISSIONERS RESOLVES THAT:

1. Cleveland County Commissioner Johnny Hutchins is hereby authorized to execute the Agreement on behalf of the County at a time following the date of this Resolution.
2. Upon the execution of the Agreement by Commissioner Hutchins and the Nation, Commissioner Hutchins shall transmit the fully executed Agreement to the Clerk to the Board of Commissioners.
3. Within thirty (30) days after her receipt of the fully executed copy of the Agreement, the Clerk to the Board of Commissioners shall cause the fully executed copy to appear in the minutes of a meeting of the Board of Commissioners.

Adopted this the 1<sup>st</sup> day of October, 2019.

By: \_\_\_\_\_  
Susan K. Allen, Chairman  
Cleveland County Board of Commissioners

ATTEST:

---

Phyllis Nowlen, Clerk  
Cleveland County Board of Commissioners

## **EXHIBIT A**



**INTERGOVERNMENTAL AGREEMENT**  
**BY AND BETWEEN**  
**CLEVELAND COUNTY, NORTH CAROLINA**  
**AND THE**  
**CATAWBA INDIAN NATION**

This **Intergovernmental Agreement** (the "**Agreement**") is made on this the \_\_\_\_ day of \_\_\_\_\_, 2019 (the "**Effective Date**"), by and between **Cleveland County, North Carolina**, a political subdivision of the State of North Carolina (the "**County**"), and **the Catawba Indian Nation**, a federally recognized Indian Tribe headquartered in Rock Hill, York County, South Carolina (the "**Nation**") (each a "**Party**" or collectively the "**Parties**").

**WITNESSETH:**

**WHEREAS**, the Nation, as an exercise of its sovereign authority, is seeking to acquire into trust status certain lands within its aboriginal territory that lie within the boundaries of the County;

**WHEREAS**, the Nation desires to develop an entertainment complex (the "**Project**"), on said lands consisting of approximately sixteen (16) acres located in the County (the "**Property**"), and more specifically located at Exit No. 5, United States Interstate 85 South, off of N.C. State Road No. 2283 (known locally as Dixon School Road);

**WHEREAS**, while the current plans for the Project are fluid and uncertain, the Parties nonetheless wish to delineate in this Agreement the terms and conditions pertaining to the development, construction, management, and operation of the Project;

**WHEREAS**, if the Nation is legally authorized to develop its Project on the Property, the Parties wish to set forth their understanding concerning the relationship between the Parties as to the development and operation of the Project and the Property;

**WHEREAS**, the County and the Nation have a mutual interest in promoting cooperation between the County and the Nation that will provide for the general welfare of all people in the County and within the Property with respect to issues including public finance, health and safety, and land use and development;

**WHEREAS**, the County and the Nation respect each other's governmental responsibilities and priorities for serving the people living within the County and the people visiting or working within the Property;

**WHEREAS**, the County and the Nation wish to enter into this Agreement, which respects the jurisdiction of both Parties, to ensure orderly and efficient delivery of services and to provide similar governing standards between the two jurisdictions;

**WHEREAS**, the Nation, in entering into this Agreement, is not limiting its sovereign powers but rather using them to advance the well-being of the Catawba people and surrounding communities; and

**WHEREAS**, the County and the Nation are entering into this Agreement in reliance on the commitments made herein.

**NOW, THEREFORE**, in consideration of the foregoing, the covenants and agreements contained herein, and for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the County and the Nation agree as follows:

**Section 1. Property Subject to this Agreement.** This Agreement concerns the Nation's development and operation of the Project and use of the Property in the County. A map and legal description of the Property is attached hereto and incorporated herein as Exhibit "A".

**Section 2. Definitions.**

The following terms shall have the following meanings for purposes of this Agreement:

"Accommodation" means a hotel room, a motel room, a residence, a cottage, or a lodging facility of any kind that is designed and used for occupancy by an individual.

"County" means Cleveland County, North Carolina, duly organized under the laws of the State of North Carolina.

"Gaming Activities" or "Gaming" means (1) the conduct of Class II or Class III gaming as defined in the Indian Gaming Regulatory Act, 25 U.S.C. § 2701 *et. seq.*; (2) the conduct of gaming that would otherwise meet the Class II and Class III definitions in the Indian Gaming Regulatory Act even if that act was not applicable; or (3) the conduct of gaming as defined under the relevant authorizing statutes, regulations, and/or judicial opinions. "Gaming Activities" shall be deemed to have commenced as of the date on which gaming operations are first made available to the public. ***Provided***, that the Nation shall provide the County with written notice of the commencement of Gaming Activities on the Property within ten (10) days of such commencement.

"Imminent or Immediate Threat" means a situation that is likely to cause an immediate threat to human life, an immediate threat of serious physical injury, an immediate threat of serious adverse health effects, or a serious risk of irreparable damage to the environment if no immediate action is taken.

"Nation" means the Catawba Indian Nation, a federally recognized tribe, duly organized under its Constitution.

"Project" means that entertainment, lodging, and/or gaming complex and all associated improvements, buildings, facilities, roads, structures, and fixtures of any kind that are now or may after the Effective Date be built, erected, placed, installed, or otherwise situated on or in the Property.

"Property" means that real estate within the County that is described in that survey map a complete and accurate copy of which is attached hereto as Exhibit "A", and all improvements located thereon.

"Public Health and Safety" means matters related to environmental conditions, occupational conditions, water quality, wastewater disposal, solid waste disposal, and food and beverage services.

"State" means the State of North Carolina.

"Sheriff" means the Cleveland County Sheriff's Office.

"Tribe" or "tribal" refers to the Nation or an aspect of the Nation, as the case may be.

**Section 3. County Fees and Service Payments; Sales Taxes.** The Parties recognize and agree that the Nation will require a number of services from the County, including, but not limited to, law enforcement services, fire protection services, and public health and safety services. The Parties further recognize that operation of the Project on the Property will result in a number of impacts to the County services and an increased financial burden to the County. The Parties recognize and agree that, although the Nation, and its Project and Property are not subject to County taxation, it is in the interest of both Parties to insure a sufficient revenue stream to the County to enable the County to provide such services and to be able to meet the increased burdens resulting from the Nation's operation of the Project. It is the intent of the County and the Nation that, to the fullest extent possible, the Nation will bear the same financial burdens as would any other non-Indian business in the County, subject to the conditions and limitations set forth herein. Therefore, notwithstanding that the Nation does not owe any taxes to the County, the Nation agrees

to pay the County the following PILOT Payments (as defined in Section "3(A)" below), fees, service payments, and Sales Taxes:

A. **Real and Personal Property.** Upon completion of the Project, the Nation agrees to make annual payments to the County in lieu of real and personal property taxes assessable with respect to the Property ("**PILOT Payments**"). *Provided*, that the Project shall be deemed to have been completed upon the opening of a temporary or permanent entertainment and/or gaming facility to the public ("**Project Completion**") and that the Nation, within fifteen (15) days of the occurrence of such completion, shall provide the County Manager with written notice of completion of the Project. Each PILOT Payment shall be equal to the real and personal property tax assessments that could be lawfully imposed in accordance with the methodology that the County would lawfully employ if the Property were subject to County real and personal property taxes. Each PILOT Payment shall be calculated by the County Tax Assessor in the same manner as is used for such calculations for similar commercial real and personal property located within the County, and shall be comprised of an annual assessment multiplied by a rate as from year-to-year lawfully established by the County. The County, by July 15 of each calendar year, shall provide the Nation with written notice of the amount of each PILOT Payment due with respect to that year (and of the methodology whereby the amount due has been calculated), which amount shall be due and payable by no later than January 15 of the following year. (If any such PILOT Payment has not been paid in full by such date, then simple interest on the unpaid balance thereof shall accrue from such date until paid at the annual rate of four percent (4.0%).) The County agrees to receive each PILOT Payment and agrees that PILOT Payments made shall be deemed to compensate the County for the tax liability that would otherwise apply if the Property was subject to taxation. *Provided*, however, if the foregoing method of determining the amount of the PILOT Payments is deemed unlawful by the United States government, then the Parties shall promptly meet and confer in good faith for the purpose of agreeing to an alternative method for determining the amount of the PILOT Payments that is consistent with all applicable law and that results in payment to the County that is substantially similar to the amount of the foregoing PILOT Payments.

1. **Annual PILOT Payments.** For the purpose of calculating each PILOT Payment, the Nation agrees to permit the County Tax Assessor, or his/her designee, access to the Property as required to assess the value of the Property. However, access to the Property shall not

exceed the minimal level of access required to complete the assessment of all other real and personal property within the County. The County agrees that the real and personal property assessments of the Property shall be made in a manner consistent with the County's real and personal property assessment procedures applicable to other property owners located in the County.

**2. Rate.**

The methods of determining the tax rate(s) and calculating the amount of each PILOT Payment shall be the same as the methods used to determine the tax rate(s) and calculating the amount of all taxes due for all other property in the County.

**3. Disputes.**

Any dispute arising under this Section 3 is subject to the dispute resolution procedures set forth in Section 11 and the limited sovereign immunity waiver set forth in Section 11(G). ***Provided***, however, that, for any dispute over the County's calculation of the amount of any PILOT Payment in which the Nation claims that the amount of any PILOT Payment should be other than the amount that has been calculated by the County Tax Assessor and billed by the County, the Parties agree as follows :

- a. The Nation may contest the annual assessment before the County Board of Equalization and Review and, if unresolved to the satisfaction of the Nation, the Nation may then appeal the Board of Equalization and Review's determination to the State Property Tax Commission, and may seek judicial review of the determination of the State Property Tax Commission in the North Carolina Court of Appeals or as otherwise provided by law.
- b. Pending the final outcome of any appeal and/or the exhaustion of all rights to appeal, as the case may be, the Nation shall timely remit the PILOT Payment(s) in dispute to the County indicating its disagreement with such Payment(s). If the final determination on the contested PILOT payment(s) is that the Nation owes less than the contested PILOT Payment(s) that the Nation has made to the County, then the County shall, within thirty (30)

days of the exhaustion of all rights of appeal to any court/forum of competent jurisdiction, remit the difference to the Nation.

**B. Local Infrastructure Fee.** The Nation shall remit to the County a local infrastructure fee in the amount of six percent (6%) of the gross receipts derived from the rental of Accommodations located on or in the Property, which shall include the rental cost of reserving each Accommodation, as well as all fees and charges of any kind that are charged by or on behalf of the Nation with respect to such reservations, including any Complimentary Accommodation Gross Receipt, but not including tribal taxes ("**Local Infrastructure Fee**"). Each complimentary, no charge Accommodation shall be deemed to generate a maximum gross receipt of one hundred dollars (\$100.00) per day ("**Complimentary Accommodation Gross Receipt**"). The maximum Complimentary Accommodation Gross Receipt, as of the first and every subsequent anniversary of the Effective Date of this Agreement, shall be adjusted by a percentage equal to the percentage by which the "Consumer Price Index for All Urban Consumers" for "All Items" (the "CPI") published during the month immediately preceding each such anniversary by the Bureau of Labor Statistics of the U.S. Department of Labor has increased or decreased as compared to the CPI that was published during the month immediately preceding such anniversary of the prior year. (The purpose of such periodic adjustment in the maximum Complimentary Accommodation Gross Receipt is to ensure that such Receipts match the pace of inflation/deflation as measured by increases/decreases in the CPI.)

The Nation shall remit said Local Infrastructure Fee to the County in the same manner and at the same time(s) as provided by law for the remission of occupancy taxes to the County by hotels generally. The Nation may also impose a separate occupancy tax for hotel stays in addition to this Local Infrastructure Fee. ***Provided***, that the Nation, by March 1 of each year if so requested by the County, shall provide the County with complete and authentic copies of documents indicating the gross receipts derived from the rental of Accommodations located on the Property during the preceding calendar year so that the County may assess the Nation's compliance with this Section 3(B).

**C. Development Fee.** In lieu of ordinary development fees, the Nation shall pay permitting and inspection fees and other administrative fees related to the development and construction of the Project (the "**Development Fee**"). Upon submission to the County of detailed building design, architectural plans, and engineering plans, the Development Fee shall be



calculated in accordance with the County's Unified Development Ordinance, as amended. A minimum payment of One Hundred and Fifty Thousand Dollars (\$150,000.00) toward such Development Fee shall be paid upon submission of the building design, architectural plans, and engineering plans. The balance of the Development Fee, if any, shall be paid within thirty (30) days of Project Completion. The Development Fee is intended to support the costs of administration, plan reviews, and inspections for, among other aspects of building construction and operation, buildings, food and beverage facilities, and water systems, including drinking water, waste water, and pool facilities.

**D.     Sales Taxes.** The Nation shall collect and remit to the County a sales tax in the amount of two percent (2%) of the gross receipts derived from the sale of food and beverages, retail sales, entertainment activities (including but not limited to "cover" and/or admission charges), and other miscellaneous sales of goods and services on the Property (collectively, the "Sales Taxes"). Payment of such Sales Taxes to the County shall be the responsibility of the Nation regardless of whether such Sales Taxes have been collected from customers who make purchases at or in the Project or on or in the Property. Such Sales Taxes, however, shall not apply to the sale of Native arts, crafts, goods, and other materials sold in the Nation's specially run Native gift shop on the Property. The Sales Taxes due hereunder shall be arrived at through the same methodology as if the Nation and transactions occurring on the Property were subject to State and County sales taxes, and shall be due and payable as of the twenty-first (21st) day of each month with respect to Sales Taxes that were collected by the Nation during the preceding month. ***Provided***, that the Nation, on or about March 1 of each year, shall provide the County with complete and authentic copies of the necessary records to support the calculation of the gross receipts of the Nation that are derived from Sales Taxes generated on the Property during the preceding calendar year so that the County may assess the Nation's compliance with this Section 3(D).

**E.     Tax Parity.** The Nation agrees that it is not seeking to secure a tax advantage for itself or other entities operating on the Property. Accordingly, the Nation agrees that it shall not permit untaxed sales of any tobacco products, motor fuel, alternative fuel, or alcoholic beverages on the Property. The Nation agrees that the fees assessed and the tax rates on the foregoing shall be no less than those fees and rates that are assessed by any lawful authority, whether by federal, state, tribal, or local government, and otherwise paid by any non-tribal entities or purchasers within the County. If the Nation does not charge or collect such taxes and fees that would otherwise be

levied with respect to tobacco products, motor fuel, alternative fuel or alcoholic beverages, then payment of such taxes to the County shall be the responsibility of the Nation, which shall remit an amount equal to such taxes to the appropriate taxing authority, including the County to the extent provided herein.

**F. Equal Protection.** The Nation and the County agree that, for purposes of collecting the PILOT payment(s), Local Infrastructure Fee, and Sales Taxes (collectively, the "**Fees**"), that the Property and all transactions occurring on the Property shall be deemed to be transactions not involving an Indian tribe and shall be deemed to occur on real and personal property that is subject to the County's taxation jurisdiction (regardless of whether such property is held in trust or restricted fee status), subject to the exceptions and limitations set forth herein. The Nation agrees that it shall not contest this characterization in any writing or proceeding for collection of these Fees. Accordingly, should the County, in good faith, amend the rates and methodology for assessment and calculation of any of the Fees with respect to businesses within the County, then such rates and methodology for assessment and calculation shall be applied to the Property and all transactions occurring on the Property; however, any such rates and fees shall not exceed the rates and fees applied generally to businesses in the county.

**Section 4. Public Health and Safety.** The Nation's operation of the Project on the Property will be subject to the same workplace, public health, safety and fair employment rules as required under North Carolina law. To this end, the Nation agrees to the following:

A. Before opening to the public any business operations on the Property, the Nation shall adopt, by resolution, and comply with standards that are no less stringent than North Carolina and related federal work place, labor, and occupational safety and health (commonly known as "OSHA") standards. The Nation shall provide the County with a meaningful opportunity to review and comment on any such proposed standards before they have been adopted by the Nation.

B. The Nation agrees to adopt and comply with the following health and safety standards of the kind that would apply were the Property and Project owned and operated by a non-tribal commercial enterprise:

1. Public health standards for food and beverage handling that are consistent with standards prescribed by North Carolina statutes, regulations, and related administrative guidance.

2. Water-quality and safe drinking water standards applicable in North Carolina by operation of State or federal law.
3. Building standards that are no less stringent than applicable building codes, fire codes, plumbing, electrical and related codes applicable in the County by either North Carolina law or County ordinance, as would apply to the construction of any similar buildings or facilities elsewhere in Cleveland County.
4. County ordinance and North Carolina laws dealing with fire safety pertaining to the operation, inspection, and maintenance of the Project.

C. The Nation will allow inspections of the Project by County inspectors, during the Project's hours of operation upon at least twenty-four (24) hours' advance written notice to the Nation by the County Manager or his/her designee(s) to assess compliance with the standards established by this Agreement. Provision of such notice shall be sent via e-mail to the Nation's primary point of contact on the Project and by overnight courier mail to the address of the Nation identified in Section 13. Nothing herein shall be construed as a submission of the Nation to the jurisdiction of such County inspectors; however, any violation of the standards may be treated as a violation of this Agreement.

D. The Parties shall consult and cooperate with one another regarding public health and safety issues of mutual concern. The Parties shall each identify a representative to serve as its respective point of contact for coordinating the handling of events that pose a threat to public health or safety. The Parties' responsibilities under this subsection shall include, at a minimum, timely notification to the other Party's point of contact of any perceived public health or safety concerns, the mutual exchange of ideas on how to respond to the concern(s), timely updates on any action being taken to address the concern(s) by a Party, and a written report summarizing with reasonable detail how the situation was ultimately addressed and what steps, if any, may be necessary or recommended to mitigate or prevent the re-occurrence of the public health or safety concern in the future. The Parties agree that this coordination function is an integral step in mitigating threats to public health and safety that may obviate the need for arbitration. The Parties also agree that such compliance with this subsection is a condition precedent to the expedited arbitration procedure for threats to public health and safety set forth in Section 11.D. of this Agreement in the event that arbitration is deemed necessary.

E. If at any time the County has grounds to determine that a public health nuisance exists, the County shall notify the Nation's representative, and if not resolved within five (5) days of provision of such notice, or such additional period as agreed upon by the Parties, then the County may invoke the expedited arbitration procedure under Section 11.D. of this Agreement.

F. Should there be an immediate and imminent threat to public health or safety, as determined by an appropriately designated State public health agency or official or the County Manager, then the County may, upon notifying the Nation's representative, conduct an emergency visit to the Property and take whatever action is necessary, consistent with North Carolina law that would apply were the Property and Project owned and operated by a non-tribal commercial enterprise, including but not limited to seeking immediate injunctive relief in the North Carolina General Court of Justice, to mitigate the immediate and imminent threat. Immediately following the emergency visit, the County shall provide a written explanation to the Nation of the basis for the emergency visit, the actions taken, and identify any additional actions that may be necessary and/or recommended in follow-up to the emergency visit and which must be carried out, if at all, in close coordination and with the approval of the Nation, which may be withheld only on an objectively-reasonable basis.

G. Upon completion of the final building design and development plans for the Project, as approved by the Nation, and before the commencement of any construction activity, the Parties agree to meet and confer for the purpose of negotiating and entering into a separate memorandum of agreement to set forth in greater detail how the Parties will coordinate on the public health safety concerns addressed in this Section 4.

#### **Section 5. Public Safety.**

A. **Emergency Medical Services.** The Nation acknowledges the importance of having adequate emergency medical services for any persons on the Property. The County, through its Emergency Medical Services Department and volunteer rescue squads, provides emergency medical services to the entire County. The County shall provide emergency medical services to the Property and the Project as requested. The Nation shall reimburse the County for the reasonable charges incurred in providing emergency medical services to or on the Property and/or the Project on the same terms and conditions as those that would be charged and could be enforced by the County were the Property and Project owned and operated by a non-tribal commercial enterprise.

**B. Law Enforcement.** The Parties recognize the Nation has responsibility for maintaining order and security on the Property. The Parties recognize the increase in traffic and attendance connected with the Project will create added burdens on the Sheriff in terms of patrolling and responding to calls for assistance. Because some of that activity will take place on the Property, it is expected that cross training in the mutual roles and respective authorities of both the Nation (and any Nation-owned entities) and the Sheriff will be necessary. To the greatest extent possible, the County Sheriff's Office will seek to hire a qualified member of the Nation as a civilian employee to facilitate communication between the Parties. The Nation agrees to reimburse the County for the reasonable added costs to its law enforcement resources for the Project and the Property to the same extent as would reasonably be expected were the Project and Property owned and operated by a non-tribal commercial enterprise. Additional reasonable costs for training for the Sheriff to provide law enforcement to the Project will be borne by the Nation.

**C. Fire Services.** The Nation acknowledges the importance of having adequate fire services for any persons on the Property. The County, through its County Emergency Management Department and County Volunteer Fire District, provides fire services to the entire County. The Parties agree that the County will provide fire services to the Property as and when requested. The Nation shall reimburse the County for the reasonable charges incurred in the provision of fire-protection services to the Property and/or the Project on the same terms and conditions as those that would be charged and could be enforced by the County were the Property and Project owned and operated by a non-tribal commercial enterprise.

**D.** Upon completion of the final building design and development plans for the Project, as approved by the Nation, and prior to the commencement of any construction activity, the Parties agree to enter into a separate memorandum of agreement, or alternatively to renegotiate this Section 5 pursuant to Section 15.I.3, to address specific services, standards, support, mitigation, coordination, reporting, and funding requirements for emergency services, law enforcement services, fire services, and fire safety. Failure to enter into a separate memorandum of agreement or to renegotiate this Section 5 in good faith and to the mutual agreement of the Parties shall be grounds for default under this Agreement, and subject to the dispute resolution provisions set forth in Section 11.

**Section 6. Civil and Criminal Jurisdiction.** The County, notwithstanding this Agreement, shall retain the right to invoke and seek enforcement of all civil and criminal laws with respect to

any person, not a member of the Nation, in a manner consistent with applicable federal and State law as of the Effective Date, and as from time to time may be amended, except to the extent explicitly provided otherwise by this Agreement. The County shall promptly notify the Nation of any suspected, alleged, or confirmed violation(s) of civil and/or criminal laws carried out by a tribal member. This provision shall not be construed so as to create criminal or civil jurisdiction over any person except as it presently exists under federal and State law. As a sovereign Indian tribe exercising inherent powers of self-governance, the Nation shall exercise exclusively jurisdiction over its tribal members, subject to applicable federal law. Notwithstanding the foregoing, if the Nation so designates, the County may exercise civil and criminal jurisdiction over members of the Nation, to the extent permitted by applicable federal law. ***Provided***, notwithstanding this Section 6, that law enforcement officers employed by the Nation, the County or the Cleveland County Sheriff are authorized to arrest and detain, on an emergent basis, any person, citizen or non-citizen of the Nation, in accordance with the U.S. Constitution and all other applicable law that apply to arrest and detainment of persons without first having to obtain the consent of the other Party or determine which Party has jurisdiction to arrest and detain in accordance with this Agreement, to the extent permitted by applicable federal law.

In order to administer and enforce State laws as set forth above, the County may investigate the activities of non-tribal employees, vendors, or guests who may be in violation of State criminal or civil laws, and the County shall report suspected violations of State laws to the appropriate State prosecution authorities and the Nation. Pursuant to such investigation, the County may seek subpoenas, in accordance with State law, to compel production of any books, papers, correspondence, memoranda, agreements, or other documents or records that are relevant or material to the investigation.

The County shall have jurisdiction to commence prosecutions of non-tribal members for violation of any applicable State civil or criminal law or regulatory requirement to the extent authorized under applicable law.

**Section 7. Public Utilities.** The Nation shall obtain utility services, including but not limited to electric services, water, wastewater, and solid waste disposal, consistent with State law and in accordance with County ordinances and/or franchise agreements.

**Section 8. Compulsive Behavior.** Within ninety (90) days of commencement of Gaming Activities on the Property, the Nation shall make a one-time payment to the Carolina Community

Health Partnership ("CCHP") or the County Health Department in the amount of fifty thousand dollars (\$50,000.00) for the treatment of compulsive behavior, including problem gambling or alcoholism. Thereafter, the Nation will make annual contributions to the CCHP or the County in the amount of twenty thousand dollars (\$20,000.00) for the same purpose, which shall be due and payable as of each anniversary of the Effective Date that occurs after the commencement of Gaming Activities on the Property. **Provided**, that the annual contributions to CCHP or the County prescribed by this Section 8 shall increase after the first annual contribution, on a year-over-year basis, at the annual rate of two percent (2%).

**Section 9. Prohibited Activities.** The Nation shall use its best efforts to prohibit and prevent the occurrence of the following activities on the Property and shall adopt an ordinance, ordinances, and/or regulations prohibiting them and providing for their enforcement:

A. Persons under the age of twenty-one (21) years shall not be allowed to gamble or remain in any room or area in which Gaming Activities are being conducted. Individuals under the age of twenty-one (21) years may pass through gaming rooms or areas only if they are in route to a non-gaming room or area of the Property.

B. Persons under the age of twenty-one (21) years shall not be allowed to purchase, consume, or otherwise possess alcoholic beverages. All alcoholic beverage service shall be in accordance with State law, and subject to the Nation's liquor control laws, as may be enacted in the future and amended from time to time; **provided** that the Nation's Liquor Ordinance has been duly approved by the Secretary of the Interior; **and provided** further that the Nation will not offer alcoholic beverages at no charge or as a complimentary service to its patrons unless other similarly situated business establishments in the State are legally authorized to offer alcoholic beverages at no charge or as a complimentary service to their patrons.

**Section 10. County Support for Project.** In consideration of the obligations undertaken by the Nation herein, and specifically of provision to the County of the "General Council Resolution" prescribed by Section 15(C) below, the County shall provide written correspondence in support of the Project to the United States Department of the Interior, Bureau of Indian Affairs ("BIA"), the State of North Carolina and any other governmental agencies or officials whose approval or cooperation must be obtained, as reasonably requested by the Nation, and the County shall promptly respond to any inquiries from these and other such governmental agencies related to the Project and Property. **Provided, however**, that the County may withdraw such "support" for



the Project if the Secretary of the United States Department of the Interior disapproves of this Agreement or determines that it is unacceptable or unenforceable; but, in the event of such disapproval or determination, the Parties shall promptly meet and confer in good faith for the purpose of agreeing to an amendment of this Agreement that renders it valid and enforceable in accordance with all applicable law.

**Section 11. Dispute Resolution.** All disputes arising under this Agreement, except as prescribed by Section 3(A)(3) and Section 4.F. above, shall be resolved solely in accordance with this Section 11, and subject to the following:

**A. Meet and Confer; Non-Binding Mediation.** If the County or the Nation believes that the other Party has committed a possible violation of this Agreement, then it may request in writing of the other Party that the Parties meet and confer in good faith for the purpose of attempting to reach a mutually satisfactory resolution of the possible violation within fifteen (15) days of the date of service of said request; *provided that* if the complaining Party believes that the possible violation creates a threat to public health or safety, then the complaining Party may proceed directly to arbitration as provided in Section 11.D. *Provided*, if one Party believes that the other Party has breached this Agreement, that the former may also ask the latter to engage in non-binding mediation in good faith in accordance with the Rules Implementing Statewide Mediated Settlement Conferences in Superior Court Civil Actions, the reasonable costs of which shall be borne equally by the Parties. The Party asked to engage in such mediation will do so in good faith in accordance with such Rules.

**B. Notice of Disagreement.** Within thirty (30) days of holding the conference prescribed by Section 11.A., subject to any agreed extension of that deadline to accommodate the completion of non-binding mediation in accordance with Section 11.A., if the complaining Party is not satisfied with the result of the conference, then the complaining Party shall provide written notice to the other Party identifying and describing any alleged violation of the Agreement ("Notice of Disagreement"), with reasonable particularity, and proposing the action(s) that it believes are required to remedy the alleged violation.

**C. Response to Notice of Disagreement.** Within fifteen (15) days of service of a Notice of Disagreement, the recipient Party shall provide a written response denying or admitting the allegations made in the Notice of Disagreement, and, if the truth of the allegations is admitted, then setting forth in detail the steps it has taken and/or will take to cure the violations. Failure to

serve a timely response shall entitle the complaining party to proceed directly to arbitration, as provided in Section 11(D). below.

**D. Binding Arbitration Procedure.** Subject to prior compliance with Section 11.A. above, and the requirements of Sections 11.B. and 11.C, except as provided in Section 11.E., either Party has the right to initiate binding arbitration as the sole mechanism by which to initiate enforcement of the terms of this Agreement. Such arbitration shall be conducted in accordance with the following procedures (the "Arbitration"):

1. Selection of the Arbitration Panel.

(a) Disputes Involving Recovery or Liability of Less Than \$250,000. The Arbitration shall be administered by the American Arbitration Association in accordance with its Commercial Arbitration Rules (collectively, the "AAA Rules") and shall, except as set forth below, be conducted by one (1) arbitrator who shall have been selected pursuant to the AAA Rules; ***provided***, that he/she must be a licensed attorney who has been actively engaged in the practice of law for at least the last ten (10) years, and during such ten years has been a member in good standing of the bar of the State, and who has served as an arbitrator and rendered a written opinion in at least one (1) completed arbitral proceeding within the last five (5) years and has demonstrated expertise in federal Indian law generally and in federal Indian gaming law specifically if the issue in dispute involves federal Indian gaming law. The Parties and the arbitrator shall maintain strict confidentiality with respect to the Arbitration so as to protect the proceedings and any matters, materials, or information disclosed therein from disclosure to any third party, except to the extent required by law.

(b) Disputes Involving Recovery or Liability of \$250,000 or More. If either Party advises the other Party that it reasonably believes that the issue in dispute to be submitted to Arbitration involves potential recovery by a Party, or potential liability of a Party, in an amount exceeding two hundred and fifty thousand dollars (\$250,000.00), exclusive of costs of arbitration/litigation and reasonable attorneys' fees, then the Arbitration shall be conducted by a panel of three (3) arbitrators (the "Panel"). Each

Party shall select one person to act as arbitrator and the two selected shall select a third arbitrator within ten (10) days of their appointment. If the arbitrators selected by the Parties are unable or fail to agree upon a third arbitrator, the third arbitrator shall be selected by the AAA. Each arbitrator shall satisfy the qualifications of the arbitrator in accordance with Section 11.D.1.a. The Parties and Panel shall maintain strict confidentiality with respect to the Arbitration so as to protect the proceedings and any matters, materials, or information disclosed therein from disclosure to any third party, except to the extent required by law. The written decision of the Panel in which two or three members of the Panel join in writing shall control the Arbitration.

2. Arbitration Award. The Arbitration shall be held in Cleveland County, North Carolina, unless otherwise agreed to by the Parties in writing. The arbitrator(s) shall be empowered to grant all legal and equitable remedies and relief that could be secured in a State court of law, including injunctive relief; ***provided***, that the arbitrator(s) shall not have the power to award punitive damages or damages of a kind that cannot be obtained for breach of contract in accordance with North Carolina law. The award shall be made within nine (9) months of the filing of the notice of intent to arbitrate, and the arbitrators shall agree to comply with the schedule before accepting appointment. However, this time limit may be extended by agreement of the Parties or by the majority of the arbitrators, if necessary. Any award rendered in Arbitration shall be final and binding on the Parties.

3. Discovery. Consistent with the expedited nature of arbitration, each Party will, upon the written request of the other Party, promptly provide the other with copies of documents, provided such documents are directly relevant to the issues raised by any claim or counterclaim, and which may be redacted as necessary to protect confidential and/or sensitive information. Any dispute regarding discovery, or the relevance or scope thereof, shall be determined by the arbitrator(s), who shall decide to grant leave based on the need of the requesting Party and the burden of such discovery in light of the nature and complexity of the dispute, and such determination shall be conclusive when rendered by a single arbitrator under

Section 11.D.1.a. or the majority of the Panel under Section 11.D.1.b. All discovery shall be completed within forty-five (45) days following the appointment of the arbitrator(s), unless the Parties agree in writing to an extension.

4. Request for Hearing and/or Trial. The arbitrators shall set the matter for a hearing and/or trial upon the written request of a Party. The requesting Party must also provide three (3) days' written notice to the other Party prior to making said request. The arbitrators may also independently recommend that the Parties set the matter for a hearing and/or trial, which recommendation shall be non-binding and left to the Parties' discretion.

5. Arbitration Decision. The resulting decision shall be in writing and explain the reason(s) for the decision. Judgment on the decision of the arbitrator or Panel, may be entered in the United States District Court for the Western District of North Carolina, the Superior Court Division of the North Carolina General Court of Justice sitting in Cleveland County, North Carolina (or in any other venue of the North Carolina General Court of Justice prescribed by the North Carolina General Statutes), or in the Catawba Indian Nation Tribal Court, if the Nation has established one with jurisdiction over the matter(s) and subject to the provisions set forth in Section 11.F set forth below. The costs and expenses of the Arbitration shall be shared equally by and between the Parties.

6. Enforcement. An action to compel Arbitration or to enforce any award or specific performance ordered in an Arbitration may be brought in the United States District Court for the Western District of North Carolina, the Superior Court Division of the North Carolina General Court of Justice sitting in Cleveland County, North Carolina (or in any other venue of the North Carolina General Court of Justice prescribed by the North Carolina General Statutes) or in the Catawba Indian Nation Tribal Court, if the Nation has established one with jurisdiction authority over the matter(s) and subject to the provisions set forth in Section 11.F set forth below, and in all appellate courts to which appeals lie as provided by law.

**E. Emergency Arbitration for Public Health or Safety Nuisances or Threats.** If either Party reasonably believes that, in violation of this Agreement, the other's conduct has caused or will cause a nuisance or threat to public health or safety, the resolution of which cannot be

delayed for the time periods otherwise specified in this Section 11, then the complaining Party may proceed directly to arbitration under this Section 11.E, without regard to the requirements set forth in Sections 11.A–D, which shall be referred to as "Emergency Arbitration" and administered by the American Arbitration Association in accordance with the AAA Rules on Emergency Measures of Protection and conducted in accordance with the following procedures:

1. Notice of Demand for Emergency Arbitration. A Party in need of emergency relief under this Section 11.E shall notify the AAA and other Party in writing of the nature of the relief sought, the reasons why such relief is required on an emergency basis, and the basis for the complaining Party's entitlement to emergency relief. Such notice shall be sent via email with read receipt to the other Party's primary point of contact on the Project and by overnight mail to the Party's address identified in Section 13.
2. Appointment of Emergency Arbitrator. Within one (1) business day of receipt of notice as provided in Section 11.E.1, the AAA shall appoint a single emergency arbitrator designated to rule on emergency actions. The emergency arbitrator shall immediately disclose any circumstance likely, on the basis of the facts disclosed by the acting Party, to affect the arbitrator's impartiality or independence. Any challenge to the appointment of the emergency arbitrator must be made within one (1) business day of the communication by the AAA to the Parties of the appointment.
3. Schedule of Emergency Arbitration. The emergency arbitrator shall as soon as possible, but no later than two (2) business days of appointment, establish a schedule for consideration of the request for emergency relief, as well as the provision of any limited, expedited discovery or document production. Such a schedule shall provide a reasonable opportunity to all parties to be heard and may provide for alternative proceedings than a formal hearing, such as via tele- or video-conference or on written submissions.
4. Emergency Arbitration Award. If after consideration the emergency arbitrator is satisfied that the Party seeking the emergency relief has shown that the other's conduct has caused or will cause a nuisance or threat to public health or safety that requires emergency relief, and that the seeking

Party is entitled to such relief, then the emergency arbitrator may enter an order or award granting said relief and stating the reason(s) therefore. The Emergency Arbitration award shall be binding on the Parties.

5. Appeal of Emergency Arbitration Award. Any application to modify or appeal an award of emergency relief must be based on changed circumstances and may be made to the emergency arbitrator so long as the Emergency Arbitration is active, which shall not exceed a period of thirty (30) days following the appointment of the emergency arbitrator. If after such thirty (30) days the emergency dispute has not been resolved or an application to modify an award of emergency relief is still pending, then the Parties shall initiate binding Arbitration procedures in accordance with Section 11.D to resolve the dispute. The emergency arbitrator shall have no further power to act after the selection of an Arbitration panel pursuant to Section 11.D.1, **provided** that the Parties may agree to name the emergency arbitrator as the Arbitration arbitrator or a member of the Panel, depending on the amount of recovery or liability involved in the dispute.
6. Emergency Arbitration Costs. The costs associated with an Emergency Arbitration shall be equally borne by the Parties unless it is determined by the emergency arbitrator or by an arbitrator or Panel in directly resulting subsequent Arbitration that the complaining Party acted unreasonably and without justification in requesting the Emergency Arbitration, in which case the complaining Party shall be solely responsible for the costs of the Emergency Arbitration.
7. Emergency Award Enforcement. An action to enforce any order or emergency relief ordered in an Emergency Arbitration shall be brought in the Superior Court Division of the North Carolina General Court of Justice sitting in Cleveland County, North Carolina (or in any other venue of the North Carolina General Court of Justice prescribed by the North Carolina General Statutes) or in the Catawba Indian Nation Tribal Court, if the Nation establishes one with jurisdiction authority over the matter(s) and subject to the provisions set forth in Section 11.F.

**F. Periodic Review of Tribal Court Status and Extension of Tribal Court Jurisdiction; Comity.** The Parties hereby agree that, five (5) years from the Effective Date of this Agreement, there shall be a meeting between the Nation and the County to discuss whether the Nation has established a "Tribal Court" of competent jurisdiction that shall be added as a forum for the enforcement of the terms of this Agreement. The establishment of such Tribal Court shall be evidenced by the adoption of a Catawba Indian Nation Judicial Code that shall include, at a minimum, chapters on Tribal Court Structure (including jurisdiction), Judicial Qualifications and Appointments (including that each judge must be a member in good standing of a state bar who shall have engaged in the practice of law or served as a judge on a regular and full-time basis during the ten (10) years next-preceding appointment as a judge of the Tribal Court, and Court Procedures (including appeals)). No such Tribal Court shall be recognized as a forum for the enforcement of the terms of this Agreement unless the courts of North Carolina have extended comity to tribal courts or the State of North Carolina, by statute duly adopted or another method recognized by law, has recognized the validity of the judgments and decrees of such Tribal Court and deemed them to be as enforceable as those of the district courts of the United States within the State of North Carolina as set forth in Section 1-237 of the North Carolina General Statutes as in effect as of the Effective Date, as from time to time amended. If such Tribal Court is found to have been so established and if its judgments and decrees have been so recognized and declared so enforceable, then the extension of Tribal Court jurisdiction over disputes arising from the terms of this Agreement shall not be unreasonably denied by the Parties. However, if the Parties find that no such Tribal Court has been established by the fifth (5th) anniversary of the Effective Date of this Agreement, then the Parties agree to meet every five (5) years after such fifth (5th) anniversary to assess the status of the Tribal Court, if any, until such time as a Tribal Court has been established or this Agreement is no longer in effect, whichever shall come first.

**G. Limited Waiver of Sovereign Immunity.** The Nation hereby expressly, unequivocally, and irrevocably waives its sovereign immunity for the limited purpose of enabling the County to enforce the terms of this Agreement, including but not limited to doing so by seeking appropriate injunctive relief and/or judicial enforcement of any award and/or specific performance ordered in Arbitration in the United States District Court for the Western District of North Carolina, the Superior Court Division of the North Carolina General Court of Justice sitting in Cleveland County, North Carolina, or in Catawba Indian Nation Tribal Court, if the Nation has



established one in accordance with this Agreement. The Nation further waives any Tribal Court exhaustion requirements, regardless of when such requirements may have arisen or may arise in the future. This limited waiver of immunity shall not extend to or be used for or to the benefit of any other person or entity of any kind or description whatsoever, including any successor or assign of the County. Nothing herein shall be construed to constitute a waiver of the sovereign immunity of the Nation with respect to any party other than the County. Except as expressly provided herein, nothing in this limited waiver of immunity shall be construed as a waiver or consent to the levy of any judgment, lien, or attachment upon any property or interest in property of the Nation other than as set forth in this Section 11(G). Pursuant to this limited waiver of sovereign immunity, a judgment or award against the Nation may be satisfied only from the Property, the Project and the revenues of the Project, and in no instance shall any enforcement of any kind whatsoever be allowed against any other assets of the Nation

#### **Section 12. Indemnification.**

A. The Nation agrees to and shall indemnify, defend, protect, and hold harmless the County, its elected officials, officers and employees acting in their official capacities from and against any and all claims, losses, proceedings, damages, causes of action, liability, costs, and expenses (including reasonable attorneys' fees), arising from or in connection with, or caused by any act, omission, or negligence of the Nation or its contractors, licensees, invitees, agents, lessees, servants or employees, related to or in connection with any obligations on the Nation's part to be performed under the terms of this Agreement or any such claim or any action or proceeding brought thereon or any action or proceeding filed against the County which challenges the County's approval, execution, or delivery of this Agreement; and in any case, any action or proceeding brought against the County by reason of any such claim, the Nation upon notice from the County shall have the option to defend the same at the Nation's expense by counsel reasonably satisfactory to the County. However, in the event that the Nation does not elect to defend the action or proceeding, the County shall defend the same at the Nation's expense, and shall consult with the Nation during the pendency of the action or proceeding. In any case, offers of settlement must be approved by the County and the Nation, which approval shall not be unreasonably withheld.

B. The County agrees to and shall indemnify, defend, protect, and hold harmless the Nation, its elected officials, officers, and employees acting in their official capacities from and against any and all claims, losses, proceedings, damages, causes of action, liability, costs, and

expenses (including reasonable attorneys' fees), arising from or in connection with, or caused by any act, omission, or negligence of the County or its contractors, licensees, invitees, agents, lessees, servants or employees, related to or in connection with any obligations on the County's part to be performed under the terms of this Agreement or any such claim or any action or proceeding brought thereon or any action or proceeding filed against the Nation which challenges the Nation's approval, execution, or delivery of this Agreement; and in any case, any action or proceeding brought against the Nation by reason of any such claim, the Nation upon notice from the County shall have the option to defend the same at the County's expense by counsel reasonably satisfactory to the Nation. However, in the event that the County does not elect to defend the action or proceeding, the Nation shall defend the same at the County's expense, and shall consult with the County during the pendency of the action or proceeding. In any case, offers of settlement must be approved by the Nation and the County, which approval shall not be unreasonably withheld.

### **Section 13. Notices.**

Any notice required under this Agreement shall be sent to the following:

Cleveland County  
Attn: County Manager  
P. O. Box 1210  
Shelby, North Carolina 28151-1210

Catawba Indian Nation  
Attn: Chief William Harris  
996 Avenue of the Nations  
Rock Hill, South Carolina 29730

Copy to:  
Ward and Smith, P.A.  
Attn: Grant B. Osborne, Esq.  
Suite 300  
82 Patton Avenue  
Asheville, North Carolina 28801

Copy to:  
Gregory A. Smith, Esq.  
Hobbs Straus Dean & Walker, LLP  
2120 L Street NW, Suite 700  
Washington, DC 20037

Copy to:  
Jeffrey C. Harris, Esq.  
Tribal Attorney, Catawba Indian Nation  
996 Avenue of the Nations  
Rock Hill, South Carolina 29730

and/or to such other respective addresses as may be designated by notice given in accordance with this Section 13.

### **Section 14. Insurance.**

The Parties understand that it is the Nation's practice to maintain appropriate insurance coverage for itself and all entities of the Nation. Consistent with that practice, the Nation agrees to

obtain and maintain, with responsible insurance carriers licensed to do business in the State of North Carolina, insurance (including coverage of public liability and property loss damage) satisfactory to the County covering the Property and all structures constructed thereon naming the Nation and all Nation-entities as insured parties. The tort liability insurance coverage shall be at least two million dollars (\$2,000,000.00) per occurrence and twenty million dollars (\$20,000,000.00) annual aggregate. In addition, the Nation will maintain liquor liability coverage of at least two million dollars (\$2,000,000.00) per occurrence. Certificates evidencing such coverage shall be delivered to the County annually.

#### **Section 15. Miscellaneous Provisions.**

##### **A. Effective Date and Term.**

This Agreement shall become effective on the Effective Date and shall remain in effect through and including the earlier of (a) the date that is twenty (20) years after the date on which "Gaming Activities" were first made available to the public on the Property or (b) December 31, 2049, unless otherwise terminated by the mutual written consent of the Parties or for cause as provided in and subject to Section 15.B.

##### **B. Termination.**

This Agreement shall immediately terminate upon issuance of a legally binding "Indian Land Opinion" by the National Indian Gaming Commission ("NIGC") or the U.S. Department of the Interior concluding that the Property does not qualify for lawful gaming under federal law, except to the extent that such determination is stayed pending any appeal. ***Provided, however,*** in the event of such a termination, that all fees payable to the County as of or before the date of such termination shall remain payable and be paid in full within ninety (90) days of such termination.

No breach or violation of any of the terms of this Agreement by either Party shall operate to void or terminate or provide grounds for termination hereof, it being the intent of the Parties that the provisions of this Agreement shall be subject to specific performance, and injunctive relief shall be provided to cure anticipatory breaches prospectively, and damages shall be awarded to redress any harm occasioned by a breach; ***provided, however, that*** if a Party cannot or will not conform to the requirements of this Agreement as evidenced by a pattern of documented violations of the terms set forth herein and/or a series of documented violations that pose a serious threat to public health, safety or welfare, then this restriction on termination shall not apply.

##### **C. Authorization.**

The County and the Nation each represent and warrant that each has performed all acts required by its own laws for the validity of adoption of this Agreement, including, but not limited to, matters of procedure and notice, and each has the full power and authority to execute this Agreement and to perform its obligations in accordance with the terms and conditions thereof, and that the representative executing this Agreement on behalf of such Party is duly and fully authorized to so execute and deliver this Agreement. A copy of the Resolution of the Executive Committee of the Catawba Indian Nation authorizing this Agreement on behalf of the Nation is attached as Exhibit "\_\_\_\_". Said resolution shall(1) expressly approve and authorize this Agreement by the Executive Committee on behalf of the Nation, (2) direct the execution, delivery and performance of this Agreement by the Chief on behalf of the Nation, (3) independently grant and approve an express, unequivocal and irrevocable limited waiver of the Nation's sovereign immunity to suit, (4) consent to the jurisdiction of the courts specified in the Agreement, (5) consent to the application of the laws of the State of North Carolina to govern the Agreement, (6) consent to arbitration, (7) waive the Nation's right to exhaustion of tribal remedies, and (8) waive venue and jury trial (items (3) – (7) set forth in this Section 15(C) are referred to herein as the **“Dispute Resolution Provisions”**). The Executive Committee’s resolution also will recite the Constitutional provisions authorizing the Executive Committee’s actions in enacting the Executive Committee resolution, authorizing this Agreement and granting the Nation’s limited waiver of sovereign immunity and consenting to the Dispute Resolution provisions, including (a) that the Executive Committee is authorized pursuant to the authority granted the Executive Committee in the Catawba Constitution and Bylaws, which provides that it “shall be the duty of the Executive Committee ... to act on behalf of the General Tribal Council at such times as said Council is not in possession and to have charge of all routine matters which shall arise during such recess, including ... such other matters as may be delegated to it by the General Council [Bylaws, Article II, Section 3]” and (b) the authority of the Chief pursuant to the Catawba Constitution and Bylaws which provides that the Chief “shall at all times have general supervision of the affairs of the General Council and Executive Committee and such matters as naturally pertain to the general welfare of the community [Bylaws, Article I.1.(a)]”. ***Provided, further,*** that although the Executive Committee has the authority to enter into this agreement, it is the Executive Committee’s practice to brief the General Council on major matters and to seek an expression of support. Whereas the County has also requested that the General Council provide a resolution of

support, the Executive Committee, at the next regular meeting of the General Council to be held in **July of 2019**, or at a "special meeting" of the General Council called and held by no later than **December 31, 2019** (the "General Council Resolution Deadline"), in accordance with Section 4 of Article III of the "Constitution and By-Laws of the Catawba Nation of South Carolina" adopted by the Nation on or about August 30, 1975 (the "**Constitution**"), shall brief the General Council on this Agreement and secure the General Council's written resolution of support in accordance with Articles III and IV of the Constitution (the "**General Council Resolution**"). Although not required as a matter of Catawba law, for the sake of completeness, this resolution will expressly affirm all of the terms of this Agreement and the authority of the Executive Council to have negotiated and authorized the Chief to sign it. The Executive Committee shall use its best efforts, before any such regular or special meeting, to recommend and promote this Agreement to the General Council and encourage members thereof to appear and vote at such meeting to approve such a General Council Resolution, for the purpose of securing the General Council Resolution. If the Nation has failed to secure the General Council Resolution by December 31, 2019 (unless that date has been extended in writing by agreement of the County), then such failure shall not void this Agreement or render it voidable by the Nation, but shall render it voidable by the County alone if the County advises the Nation in writing by no later than February 15, 2020 (or such later date as may be agreed by the Parties), that the County has elected to void this Agreement. The County shall agree to at least one (1) extension of the General Council Resolution Deadline through and including July 31, 2020, at the request of the Nation. Notwithstanding the foregoing, if the General Counsel expresses concerns regarding the Agreement, at the request of the Executive Committee, the Parties shall work in good faith to address those concerns and questions including if necessary renegotiating the terms of this Agreement.

**D. Interpretation.**

This Agreement shall be interpreted as though jointly drafted by the Parties.

**E. Governing Law.**

This Agreement shall be governed by and construed in accordance with the laws of the State of North Carolina and applicable federal law.

**F. Severability.**

Any term of this Agreement ruled by the arbitrator(s) or a court of competent jurisdiction to be invalid or unenforceable will be severed, and the remainder of this Agreement will be

enforced. The Parties agree to enter into good faith negotiations to replace the invalid provision(s) with a valid provision(s), the economic effect of which comes as close as possible to that of the invalid provision(s). If the Fees in Section 3 or any other provision are held invalid or unlawful in a way that results in the diminution of any payment or financial obligation of the Nation to the County, then the Parties agree to negotiate in good faith to try to replace the invalid Fees provision(s). If the Parties are unable to successfully renegotiate the invalid Fees provision(s), then, notwithstanding Section 11, but still subject to the limited waiver of sovereign immunity in Section 11(G), then the Parties agree that the arbitrator shall determine how to proceed with arbitration to address the conflict.

**G. Good Faith and Fair Dealing.**

This Agreement includes an implied covenant of good faith and fair dealing in accordance with North Carolina common law.

**H. Captions.**

The captions contained in this Agreement are inserted only as a matter of convenience and for reference and in no way define, limit, extend, or describe the scope of this Agreement or the intent of any provisions hereof.

**I. Amendment or Modifications; Reopener.**

1. This Agreement may not be amended or modified except by a writing signed by the County Manager and the Chief of the Nation pursuant to such authority as may be required by law and the Nation's governing constitution and bylaws. However, either Party may request that the other Party renegotiate one or more of the terms of this Agreement if, but not limited to, the following circumstances apply:
  - a. There is a significant change in applicable circumstances, including but not limited to a change in federal or State law that directly or indirectly relates to the Party's expectations under this Agreement and/or the application of the federal Indian Gaming Regulatory Act to the Nation as provided by law;
  - b. That change materially impacts that Party; and
  - c. That change could not have been reasonably anticipated at the time of entering into this Agreement.

*Provided, however*, if the United States Government identifies an environmental concern, the Parties will then promptly negotiate a separate "environmental matters agreement", to address mitigation of related environmental issues, if any; and that the County reserves the right to negotiate with the Nation for the purpose of reaching agreement with the Nation regarding terms and conditions pertaining to mitigation of environmental impacts that may be identified in the future as a result of environmental review processes required by law.

2. A request to renegotiate one or more of the terms of this Agreement will be made in writing, delivered to the other Party. The request will specify the basis for the request. If the request is determined to meet the requirements for renegotiation pursuant to this subsection, the Party will commence to renegotiate in good faith. However, except for the obligations to renegotiate as is set forth in this subsection, neither Party is obligated to agree to a new Agreement or to any new terms or conditions as a result of the renegotiation process.

3. Notwithstanding subsections I.1 and I.2, upon completion of the final building designs and development plans for the Project, and prior to the commencement of any construction activity, if the Parties do not enter into a separate memorandum of agreement under Section 5.D, then the Parties shall renegotiate Section 5 in good faith and to the mutual agreement of the Parties. Failure to renegotiate under this provision shall result in an automatic default of this Agreement, subject to the dispute resolution provisions set forth in Section 11.

4. Notwithstanding subsection I.1 and I.2, if there is a material change in federal or State law, or if the Nation enters into a compact with the State of North Carolina that is inconsistent with this Agreement, then the Parties, within thirty (30) days of receipt by either Party of a written demand therefor, shall meet and confer for the purpose of engaging in good-faith negotiations for the purpose of revising this Agreement to the extent needed to accommodate such material change and/or inconsistency. If a Party refuses to engage in such negotiations, then that Party shall be deemed in violation of this Agreement, which shall automatically trigger the dispute resolution provisions set forth in Section 11.

**J. Complete Agreement.**



This Agreement represents the entire integrated agreement between the Parties and supersedes all past agreements and all negotiations, representations, promises or agreements, either written or oral, made during the course of negotiations leading to this Agreement.

**Section 16. Section 81 Review by the Department of the Interior.**

If it is determined by the United States government that a Section 81 review is necessary, then within one hundred twenty (120) days of execution of this Agreement, or within three (3) days of receipt by the Nation of a written Indian Lands determination by the National Indian Gaming Commission, whichever is sooner, the Nation will submit this Agreement to the United States Department of the Interior for either (a) approval of the Agreement pursuant to 25 U.S.C. §81, or (b) a written response that this Agreement does not require approval under 25 U.S.C. §81 to be enforceable. If the Department of the Interior determines that Section 81 approval is necessary and denies approval of this Agreement, then this Agreement shall be subject to review and appropriate action by the Department of the Interior, including possible termination and the possible recovery of payments made hereunder.

**Section 17. Counterparts.** This Agreement may be executed in any number of counterparts, each of which when executed and delivered shall constitute a duplicate original, but all counterparts together shall constitute a single agreement.

**Section 18. Miscellaneous.** If after the Effective Date of this Agreement, the Nation and State of North Carolina enter into a Compact for Gaming on the property (a "Compact"), to the extent that that Compact requires payments to the County that address the PILOT, services and other payments required under this Agreement, such Compact payments shall be used to offset the Nation's obligations herein, to enable the Nation to avoid having to make duplicative payments under such Compact and this Agreement. Furthermore, any inconsistent terms between this Agreement and any future Compact will, to the extent required by law, be construed in favor of the Compact.

**IN WITNESS WHEREOF,** officers of the County and the Nation, pursuant to authority duly given by the governing bodies of each in accordance with applicable State law, ordinances and Tribal law, have executed this Agreement as of the Effective Date.

**CLEVELAND COUNTY,  
NORTH CAROLINA**

By: \_\_\_\_\_  
Susan K. Allen, Chairwoman  
Cleveland County Board of Commissioners

Approved as to form:

By: \_\_\_\_\_  
Elliot Engstrom, Esq.  
Deputy County Attorney  
Cleveland County

Attest: \_\_\_\_\_  
Phyllis Nowlen,  
Cleveland County Clerk

ND: 4821-4634-7144, v. 1

**THE CATAWBA INDIAN NATION**

By: \_\_\_\_\_  
William Harris, Chief  
Catawba Indian Nation

Approved as to form:

By: \_\_\_\_\_  
Greg Smith, Esq., Attorney for the Nation  
Hobbs, Straus, Dean & Walker, LLP

Attest: \_\_\_\_\_  
Roderick Beck, Secretary/Treasurer  
Executive Committee

**COUNTY OF CLEVELAND, NORTH CAROLINA**

**AGENDA ITEM SUMMARY**

---

**Travel and Tourism**

---

**Department:**

**Agenda Title:** Travel and Tourism

**Agenda Summary:** Emily Epley, Travel and Tourism Director

**Proposed Action:**

---

**ATTACHMENTS:**

File Name

Description

No Attachments Available

**COUNTY OF CLEVELAND, NORTH CAROLINA**

**AGENDA ITEM SUMMARY**

---

**Land Acquisition**

---

**Department:**

**Agenda Title:** Land Acquisition

**Agenda Summary:** Kerri Melton, Assistant County Manager

**Proposed Action:**

---

**ATTACHMENTS:**

File Name	Description
<input type="checkbox"/> Polkville_Road_Staff_report.docx	Land Acquisition Staff Report

## STAFF REPORT

To: Board of Commissioners

From: Gregory Pering, County Engineer

Subject: Offer to Purchase- Polkville Road

Date: Sept 30, 2019

### **Summary Statement:**

Staff has identified two parcels of land along Polkville Road totaling approximately 50 acres. The land would be banked for future economic development.

### **Review:**

In January of each year, Commissioners develop their Strategic Plan. This year, under the Economic Development focus area, Commissioners set a goal to “Analyze and perform site development on available sites and proactively plan for future product development through land-banking.” Staff has been working over the past year to identify parcels of land that would be suitable for economic development.

Staff has identified two parcels of land on Hwy 226 for the Board to consider purchasing. An overview of the property is as follows:

- **ACREAGE OF BOTH PROPERTIES: 50.29 ACRES**
- **WOODED LANDS**
- **TAX VALUE: \$258,640**
- **OFFER PRICE: \$4,000 per acre (\$204,000)**
- **PARTNERSHIP: COST TO BE SHARED WITH CITY OF SHELBY**
- **JURISDICTION: ANNEXATION TO CITY OF SHELBY FOLLOWING CLOSING**

This land purchase would be a partnership with the City of Shelby. One of the major benefits of partnering with local municipalities is the ability to partner on infrastructure as the county does not own a water, sewer or natural gas system. Several other benefits of this purchase include: Advantageous purchase price, topography suitable for development, near future 74 bypass on Polkville Road and the property could be suitable for multiple shell buildings.

### **Action Requested**

Authorize County Manager to offer \$4,000 an acre (\$204,000) for the property. Offer will include \$5,000 earnest money to allow 60 days to perform due diligence.

**COUNTY OF CLEVELAND, NORTH CAROLINA**

**AGENDA ITEM SUMMARY**

---

**Sales Tax Referendum**

---

**Department:**

**Agenda Title:** Sales Tax Referendum

**Agenda Summary:** Brian Epley, County Manager

**Proposed Action:**

---

**ATTACHMENTS:**

File Name

Description

No Attachments Available

**COUNTY OF CLEVELAND, NORTH CAROLINA**

**AGENDA ITEM SUMMARY**

---

**Kings Mountain Planning and Zoning Board ETJ**

---

**Department:**

**Agenda Title:** Kings Mountain Planning and Zoning Board ETJ

**Agenda Summary:** Phyllis Nowlen, Clerk to the Board

**Proposed Action:**

---

**ATTACHMENTS:**

File Name

Description

No Attachments Available

**COUNTY OF CLEVELAND, NORTH CAROLINA**

**AGENDA ITEM SUMMARY**

---

**Cleveland County Veteran's Advisory Board**

---

**Department:**

**Agenda Title:** Cleveland County Veteran's Advisory Board

**Agenda Summary:** Phyllis Nowlen, Clerk to the Board

**Proposed Action:**

---

**ATTACHMENTS:**

File Name

Description

No Attachments Available



**COUNTY OF CLEVELAND, NORTH CAROLINA**

**AGENDA ITEM SUMMARY**

---

**Adjourn**

---

**Department:**

**Agenda Title:** The next meeting of the Cleveland County Board of Commissioners will be held on Tuesday, October 15, 2019 at 6:00pm in the Commissioners Chamber.

**Agenda Summary:**

**Proposed Action:**

---

**ATTACHMENTS:**

File Name

Description

No Attachments Available